

*United States Court of Appeals
for the Second Circuit*



**APPELLEE'S
SUPPLEMENTAL
APPENDIX**

74-2693

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
Pols

UNITED STATES OF AMERICA,
Appellee

v.

GUY DIGIROLAMO,
Appellant

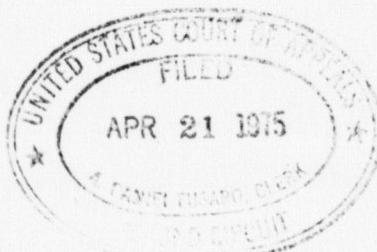
ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

SUPPLEMENTAL APPENDIX FOR THE UNITED STATES

PETER C. DORSEY
United States Attorney
New Haven, Connecticut 06110

PAUL E. COFFEY
Special Attorney,
Department of Justice,
Hartford, Connecticut 06103

SIDNEY M. GLAZER
DAVID E. ROSEBERRY
Attorneys
Department of Justice,
Washington, D.C. 20530



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U. S. DISTRICT COURT
NEW HAVEN, CONN.

RECEIVED

OCT 9 1974

U. S. ATTORNEY'S OFFICE
HARTFORD, CONNECTICUT

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

vs.

GUY DI GIROLAMO

CRIMINAL NO. B-99

MOTION FOR JUDGMENT OF ACQUITTAL OR IN
THE ALTERNATIVE FOR A NEW TRIAL

The defendant hereby moves pursuant to Rule 29 (c) of the Federal Rules of Criminal Procedure, that the Court set aside the verdict and enter a judgment of acquittal in the above captioned case or in the alternative that the Court grant the defendant a new trial.

THE DEFENDANT

BY Charles Hanken
1330 Fairfield Avenue
Bridgeport, Connecticut
His Attorney

PROOF OF SERVICE

I hereby certify that a copy of the above motion was mailed, post prepaid, to all counsel, this 28th day of August, 1974.

Charles Hanken
CHARLES HANKEN
Attorney at Law

FILED

Aug 11 1974
U. S. DISTRICT COURT
NEW HAVEN, CONN.

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DEC 20 1974
U. S. ATTORNEY'S OFFICE
HARTFORD, CONNECTICUT

FILED

DEC 13 2 35 PM '74

U. S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

VS. : CRIMINAL NO. B-99

GUY DIGIROLAMO :

NOTICE OF APPEAL

Notice is hereby given that GUY DIGIROLAMO, the above named Defendant, appeals to the United States Court of Appeals for the Second Circuit, from the final Judgment entered on December 10, 1974.

Dated at Bridgeport, Connecticut this 19th day of December, 1974.

THE DEFENDANT, GUY DIGIROLAMO

BY Charles Hanken
CHARLES HANKEN
His Attorney
1330 Fairfield Avenue
Bridgeport, Connecticut
06605

C E R T I F I C A T I O N

This is to certify that a copy of the foregoing Notice of Appeal has been mailed, this date, to Peter R. Casey, III, Special Attorney, Office of the United States Attorney, 450 Main Street, Bridgeport, Connecticut.

002

Charles Hanken
CHARLES HANKEN

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 6/5/73

On June 1, 1973, Special Agents JAMES P. MC NAMARA and RAYMOND M. LOONEY taped a recorder to the body of HARVEY ADAMS at the Sugar Cone, 444 Main Street, Monroe, Connecticut.

At approximately 10:05 PM, the following conversation was recorded:

Interviewed on 6/1/73 at Monroe, Connecticut File # NH 179-102

by SA JAMES P. MC NAMARA and
SA RAYMOND M. LOONEY JPM:afl Date dictated 6/4/73

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

003

HARVEY: I told Tok on the phone, I wasn't giving you nothing.

CARL: Harvey, I don't care what you told Tok.

HARVEY: I told him on the phone, Carl, I ain't got it.

CARL: I don't care what you told Tok.

HARVEY: What am I supposed to do Carl? I ain't got it. I ain't got it. That's what I told him.

CARL: Well, I tell you you better get it.

HARVEY: I can't. I can't get it.

CARL: What you got in there?

HARVEY: Uh, uh, that's mine, my business money, that's what I got in there.

CARL: Yeah, yeah, I don't give a fuck.

HARVEY: Well I give a fuck, it's mine. What am I supposed to do give you my business mcney?

CARL: Yeah

HARVEY: I can't.

CARL: Can't?

HARVEY: I can't. What am I supposed to do?

CARL: Come here and I'll tell you.

HARVEY: Huh, Carl, could I ask you something?

CARL: Come here and I'll tell you.

HARVEY: Could I ask you something? Wait a minute. Don't don't hit me for nothing.

CARL: Look it, I ain't hitting you.

HARVEY: Why you gonna hit me? I ain't got it.

CARL: I don't give a fuck, Harvey, I don't want to hear it man, I told you that.

HARVEY: If I had it Carl, I had it, But I ain't got it. I ain't got it.

CARL: I ain't got it, huh?

HARVEY: I gotta pay the bills.

CARL: Yep

HARVEY: If I didn't have to pay the bills, I'd give it.
How am I gonna pay the bills?

CARL: I'll tell you, Harv , you're gonna fucking pay, man.
You owe 10,000 fucking dollars.

HARVEY: I can't. How about Angelo?

CARL: I don't give a fuck about Angelo or anybody else.

HARVEY: What's Tok say about him? Because it's his brother?
That ain't fucking fair.

CARL: I don't give a fuck. What's fair or what's not fair.

HARVEY: Well, what Tok say to you.

CARL: I work. He told me to come up here and get it.
That's what he told me.

HARVEY: Well, he didn't say that to me.

CARL: Yeah, well, call him.

HARVEY: Uh?

CARL: Call him.

HARVEY: I ain't calling him.

CARL: Why not?

HARVEY: I ain't calling Tok. Why call Tok? I told him on
the phone what I had to do. If I didn't tell him,
Carl, it'd be different, but I told him on the phone.
He got all those kids over there. You can't call him
on the phone.

CARL: Well, I'll tell you what, what's that. I I don't give
a fuck. What's that Kirby vacuum cleaner worth?

HARVEY: Huh? Well you ain't taking that.

CARL: I ain't.

NH 179-102

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HARVEY: No

CARL: I'm taking something.

HARVEY: You ain't taking anything.

CARL: I ain't?

HARVEY: No

CARL: No? Well, I'll tell you then, get me 50 fucking dollars.

HARVEY: I ain't got it. Carl, I'm telling you you ain't taking nothing else.

CARL: I ain't?

HARVEY: No

(background conversation)

HARVEY: I told you I don't have it. What can I say? I told Tok on the phone the same thing, Carl. I says, Tok if I had it, I'd give it to you. I ain't got it. What am I supposed to do? I told Tok and he didn't say nothing. He didn't say a word.

CARL: He wants his money, that's what he wants.

HARVEY: Well, I told him when I called, I can't pay.

CARL: Do you think I'm here for my fucking health? Huh, or what?

HARVEY: Go talk to Tok, don't talk to me. Tok sent you up here right?

CARL: Right

HARVEY: Then, why, why should you talk to me?

CARL: I, I talk to you for the fucking money. That's why.

HARVEY: Yeah, but Tok told you to come up. I didn't tell you to come up here.

CARL: You didn't tell me to come up here?

HARVEY: No

CARL: Huh, huh, huh, like who the fuck are you to tell me to come up here.

HARVEY: Well, who the fuck are you? You're gonna come in here and take my Kirby ah thing, you know?

CARL: Well, I'll tell you, it's gotta be paid one fucking way or the other.

HARVEY: I ain't got it. I ain't got it. I got a million bills. How am I gonna pay. What am I supposed to go bankrupt? (inaudible) I can't go bankrupt, Carl. What Tok say about that?

CARL: Tok don't care.

HARVEY: So how else is he

CARL: What's he supposed to fucking say about it?

HARVEY: What's what's, what's he going to get it for 2 weeks?

CARL: What?

HARVEY: What's he gonna get the money for two weeks, and I go bankrupt?

CARL: Well, it's fucking two weeks, uh, regardless.

HARVEY: What do you mean?

CARL: Regardless. You'll get it, don't give me that fucking bull shit.

(background conversation)

CARL: Harv, don't give me that fucking bull shit. You know just as well as I do.

HARVEY: I don't understand.

CARL: Just as well as I do.

HARVEY: What?

CARL: You got the money, don't give me that fucking bull shit.

HARVEY: I got bills. I'm telling you I got bills.

CARL: Harvey, that's all the fuck I ever hear from you.

HARVEY: Well, I got bills. What am I supposed to do?

CARL: That's all the fuck I ever heard from you.

HARVEY: I work every day. I work seven days a week. I ain't working for the money? I ain't working like a nigger? Really, am I working like a nigger? I'm working seven days a week, Carl. If I wasn't working seven days a week, I'd give it to you if it was gambling money. I'd hand it to you. It ain't gambling money though. This is sweat money. My old man comes up here, he checks the register, if it's fucking short, he goes nuts. I ain't getting thrown out. Yeah, I don't know why you're smiling. I can't figure it out.

CARL: You can't figure it out, huh?

HARVEY: No

(background conversation)

HARVEY: Carl, if I had it, I told Tok, if I had it, I'd give it to him. I don't have it. I told him not to send you up. He don't listen. I said to him on the phone, Tok I said, what are you sending him up for, I ain't got nothing. I haven't got a penny. I said I got bills every fucking week. He didn't say nothing. He didn't say a word. He just started talking, I don't know.

CARL: He didn't say a word, huh? He didn't say he wanted the fucking money, did he?

HARVEY: No

CARL: Oh, fuck, huh?

HARVEY: He didn't say he wanted the money. He says its out of my hands, I can't do anything. That's what he said to me. But I didn't say it.

CARL: But he didn't, he didn't say it.

HARVEY: Well, but that's what you say. That's what you said.

CARL: It's out of his hands.

HARVEY: Yeah, but I didn't say it.

CARL: I don't understand what the fuck you're talking about, you didn't say it.

HARVEY: You said, you said, you, I made you come up here. I didn't make you come up here.

CARL: No, I never said you made me come up here.

HARVEY: Why say I came all the way up here for you. You said that right there.

CARL: I said I came all the way up here to get 50 fucking dollars.

HARVEY: Right, from me.

CARL: Yeah, right

HARVEY: But I didn't make you come up here. What do you say, I made you, I didn't make you.

CARL: You owe the fucking money, that's what.

HARVEY: Yeah, but I didn't.

CARL: Made me come up here.

HARVEY: How did I make you, I told you.

CARL: Cause you owe the fucking money, and I come up here to get it.

HARVEY: Yeah, but I told you on the phone I didn't have it.

CARL: I don't give a fuck what you told me on the phone.

HARVEY: What do you mean? I don't understand you.

CARL: Just what I said, I don't give a fuck.

HARVEY: Why?

CARL: Because I want the fucking money.

HARVEY: I ain't got it though. I ain't got it Carl. How am I gonna give it to you? Huh? What am I supposed to, make it? I'm working seven days a week. I ain't making no money. I'm paying my wife fucking money. It ain't simple as though you pull it out of a tree. My old man's gonna throw me out if I fuck around. Where am I going? I ain't blowing my business and my fucking life for Tok. I'm telling you right now. I can't. I can't do this. I can't I'd rather get fucking shot. I told him on the phone that. What am I supposed to do? Huh? You tell me what I'm supposed to do.

CARL: Yeah, you supposed to fucking rob, steal or what.

HARVEY: No, no, I don't, I can't rob, steal or what. No.

CARL: No?

HARVEY: I can't. I ain't built that way. Angelo owes me the money. What happened there? With the 10,000 he owes me.

CARL: I don't know nothing about that.

HARVEY: I know. Everybody don't know nothing about it. But when it's about me, what am I supposed to do? Is that right or wrong? When it's about me, now Angelo owes me the money. Tok ain't collecting it from him. He can go ask Angelo for 25 a week. Just switch the tops. He got screwed from people in New York, right? Why don't he go see them people. Why's he gotta bother me? Explain that to me, okay? Am I right or wrong? If I'm wrong tell me. Angelo owes me 11,000 dollars right? Why can't Tok get that from him? Cause it's his brother? He screwed you out of money too. You told me that. Did he, or didn't he?

CARL: Angelo.

HARVEY: I thought you collected money for him, he didn't give you nothing.

CARL: That's besides the fucking point.

HARVEY: Everything everybody's getting screwed except Tok. That's right? When you got screwed with Angelo, Tok was on the good end. When I'm getting screwed, Tok's on the good end. Why's that? Why are we always the niggers? That ain't fucking right? Do you understand what I'm saying?

CARL: Yeah, I understand what you're saying.

HARVEY: Well, then what am I supposed to do? Huh? Carl.

CARL: What?

HARVEY: What am I supposed to do? What?

CARL: Huh?

HARVEY: What did he tell you we did on the phone?

CARL: What?

HARVEY: What did he tell you I said on the phone?

CARL: He told me to come up here.

HARVEY: Yeah

CARL: Yeah

HARVEY: Well, for what reason?

CARL: For what reason? To collect the fucking money.

HARVEY: Yeah, but I told him on the phone I wasn't giving it to you. I told him that on the phone, I said I can't give it, I ain't got it. Oh, he told you to come up here anyhow.

CARL: Well, I'll tell you, I'll tell you fucking Harvey, I'll tell you, you know I'll tell you, I'll tell you, I'm gonna fucking rack you're fucking brains in.

HARVEY: Why though? Cause Tok told you to?

CARL: I was gonna beat your fucking brains in.

HARVEY: Why though?

CARL: You fucking

HARVEY: For what reason? I don't understand your reason.
I told you his brother owes

CARL: Look it

HARVEY: Me the money, would you give it to him.

CARL: Look it

HARVEY: Wait a minute, would you give him the money?

CARL: Give him.

HARVEY: Tok

CARL: Well, you and me is two fucking different people.

HARVEY: Right

CARL: For one thing.

HARVEY: Right

CARL: And for another thing, I work for Tok. That's

HARVEY: Okay, you work for Tok. That's alright. If Angelo
screwed you and then Tok, you owed Tok.

CARL: How about when, how about when the fuck I, you had me
around, did did you fucking do right by me? You
didn't do fucking right.

HARVEY: I paid your rent over there and everything.

CARL: Harvey, don't give me that bull shit.

HARVEY: I treated you good.

CARL: Yeah, bull shit.

HARVEY: Tok, okay, Tok pushed you off on me. That's right.
Tok's a smarty, that's all. He's got a lot brains.
He's got a lot of brains. He gets you mad at every-
body and then you do what he says. But that ain't
right.

CARL: Yeah, well fuck him too.

HARVEY: Well, tell him.

CARL: Okay Harvey, that's the only fucking reason why I'm paid. If it wasn't for that you wouldn't fucking get away with it.

HARVEY: Well, that's why I told Tok not to send you up here.

CARL: If it wasn't for that, pal, you wouldn't get away with it.

HARVEY: Wasn't for what?

CARL: Cause I'll tell you, if it wasn't for what the fucking bull shit that going on, with Tok and his fucking crap, huh, you wouldn't get away with it. You fucking pay one way or the other. One fucking way or the other. You either go to the fucking hospital or that's one fucking way, I'll tell you.

HARVEY: I'll tell you Carl, let me tell you something. When I'm right, huh, when I'm right, I'm right. And you know that, cuase I'm a scared. I ain't afraid, I ain't afraid to tell you I'm a scared. But, when I'm if I'm standing here and told to come up here and beat the shit out of me, I didn't say nothing.

CARL: But you, that's the only fucking reason, because, okay, all right, that's the only fucking reason.

HARVEY: Well, I don't know.

CARL: I'm sick of fucking people's fucking bull shit myself.

HARVEY: Well what (inaudible), huh? okay, tell Tok I ain't paying him.

CARL: You told him already, right?

HARVEY: Huh?

CARL: You told him already.

HARVEY: Yeah, but tell him again. He's leaving.

2 again to speak with Mr. Adam?

3 A Yes, I did.

4 Q Do you recall when?

5 A It was the following Tuesday or Wednesday; I'm
6 not sure.

7 Q Did you speak with him in person or telephonically?

8 A In person.

9 Q Where did that take place?

10 A At the Sugar Cone ice cream parlor.

11 Q Approximately what time?

12 A Sometime during the afternoon. I can't recall
13 the exact time.

14 Q Did you stay at the ice cream parlor for any
15 length of time after speaking with him?

16 A No, I did not.

17 Q Do you recall when next you spoke with Mr. Adam?

18 A On June 1, 1973.

19 Q Where did he first speak with you?

20 A We're in the back room of the ice cream parlor.

21 Q What time --

22 A Oh, no, excuse me, excuse me. I got a phone
call from him that afternoon.

23 Q Approximately what time?

24 A Three-thirty or so.

014

Q After speaking with him on the phone, did he contact you or did you contact him again?

A He called me again about five p.m., five-fifteen p.m.

Q As a result of those two telephone conversations, did you do anything?

A Yes, I did.

Q What did you do?

A I went to the ice cream parlor on the evening of June 1, 1974, with three other FBI agents.

Q Who were those three agents?

A There was Raymond Looney, Robert O'Neill and James Handley.

Q Who was in charge of this particular group?

A I was.

Q When you arrived at the ice cream parlor, did you give any assignments?

A Yes, I did.

Q What assignments did you give to the other agents under your direction and control?

A I instructed Agents Handley and O'Neill to go outside the ice cream parlor and to stay in a Government automobile which had a two-way radio and to stay in contact with us, with Mr. Looney and I, who were inside, who had a

1 2 handy-talkie radio.

2 3 Q At this time did you have any conversation, when
4 4 you first arrived at the ice cream parlor, with Mr. Adam?

5 6 A Yes, I did.

6 7 Q Physically what steps did you take, if any,
7 8 concerning his person on that occasion?

8 9 A I placed a transmitting unit on his body and
9 10 taped it heavily with approximately one-inch or one-and-a-
10 11 quarter-inch adhesive tape to make sure it stayed on his
11 12 body. Then I told him to go outside and to stay in the --
12 13 what they call the carry-out area or the section where the --
13 14 of the ice cream parlor where individuals walk in off the
14 15 street or drive in and just get ice cream cones rather than
15 16 sit down and dine in the restaurant.

16 17 Q Prior to putting this device on Mr. Adam's
17 18 person, did you test the electronic equipment to determine
18 19 if it was functioning properly?

19 20 A Yes, I did.

20 21 Q What was the result of that test?

21 22 A It was functioning.

22 23 Q Would you describe, please, in layman's terms,
23 24 just how a body transmitter and a receiver works, this
24 particular receiver and transmitter?

25 26 A It's a small unit which you tape underneath a

016

1 person's arm or off -- down in this area of an individual.
2 I ran adhesive tape completely around his body. There's a
3 long piece of wire on it, and he's supposed to keep that above
4 the transmitting unit. I taped that to his body, put his
5 shirt on top of it. Then I instructed him to go out into the
6 ice cream parlor and just talk normally.
7

8 I had a receiving unit in the back room which
9 picked up the conversation that was taking place in the ice
10 cream parlor. I also had at my disposal a small cassette
11 whereby I could record any conversation that I wished that
12 took place that evening.

13 Q I show you marked for identification Government
14 Exhibit No. 1 and ask you if you recognize that object.

15 A Yes, this is the transmitting unit which I placed
16 on the body of Harvey Adams on June 1, 1973.

17 Q Is that the same object you also placed on his
18 body on the 25th, if you recall?

19 A Yes. Object #1 which I placed on him and object #2

20 Q I show you marked for identification Government
21 Exhibit No. 2 and ask if you recognize that object.

22 A Yes, I do.

23 Q What is it?

24 A That's the receiving unit and the recording unit
which I utilized at the ice cream parlor on June 1, 1974 --

017

1
2 '73, excuse me.

3 Q Did you in fact monitor any conversations on the
4 evening of June 1st?

5 A Yes, I did.

6 Q How were those conversations received by you as
7 you sat in the back room?

8 A Loud and clear.

9 Q As you received them, what steps, if any, did
10 you take to reduce them to some recorded form?

11 A I taped one conversation that took place that
12 evening.

13 Q How did you do that physically?

14 A There's a cassette that was inside here, inside
15 this receiving unit.

16 Q Government Exhibit No. 2?

17 A Government Exhibit No. 2.

18 At the proper time there's a button here which I
19 depress which states "Record," which I pushed down and then
20 turn it on like that, and that would record a conversation
21 as opposed to just listening to it. But you could also
22 listen and record at the same time. But I did not record
23 any -- only one conversation that evening.

24 Q That one conversation which you did record --
25 were you able to monitor it at the time it was being

018

SANDERS, GALE & RUSSELL,
CERTIFIED STENOTYPE REPORTERS

? simultaneously recorded?

3 A Yes, I was.

4 Q I show you marked for identification Government
5 Exhibit No. 3 and ask you if you recognize that object.

6 A Yes, I do.

7 Q What is it?

8 A That's a cassette, recording cassette, which I
9 had in this unit on June 1, 1973. My initials are on it and
10 the date.

Q After that particular cassette was used to record
a conversation, in whose custody and control has it been
since that time to today?

A It's been in my custody and control.

15 Q Can you tell the ladies and gentlemen of the jury
16 the last time you listened to what is recorded on that
17 conversation?

18 A Yesterday afternoon.

19 Q Did you have occasion to compare what you heard
20 yesterday with what you heard on June 1, 1973?

31 A Yes, I did.

Q Based on that comparison, have there been any additions, changes, deletions or any physical changing in the cassette recording from June 1, 1973 to today?

A No, there has not.

019

SANDERS, GALE & RUSSELL
GENERAL STENOGRAPHERS

2 Q I show you marked for identification Government
3 Exhibit No. 4 and ask if you recognize that document.

4 A Yes, I do.

5 Q Without telling us what is on it, what is it?

6 A It's the -- what the FBI refers to as an interview
7 report form, whereby you set forth your results of an
8 interview or some action that took place.

9 Q Was a transcript of the conversation recorded on
10 Government Exhibit No. 3 made?

11 A Yes, it was.

12 Q What is Government Exhibit No. 4, without telling
13 us what words are said?

14 A It's -- what is contained on Government Exhibit No.
15 3 is typed out in Government Exhibit No. 4.

16 Q It is a transcript?

17 A Transcript.

18 Q Have you had occasion to compare that transcript
19 with the conversation you heard yesterday on Government Exhibit
20 No. 3?

21 A Yes, I have.

22 Q Is it a fair and accurate representation of what
23 is verbally said by the participants to that conversation?

24 A I believe it is.

25 Q On that particular transcript, Government Exhibit

.020

SANDERS, GALE & RUSSELL
CERTIFIED STENOTYPED REPORTERS

50 MAIN STREET
HARTFORD, CONNECTICUT

NEW HAVEN

No. 4, who directed the preparation of that document?

A I did.

Q Is there any identification of voices on the transcript?

A Yes, there are.

Q Are remarks attributed to a certain individual?

A Yes, they are.

Q And are other remarks attributed to another individual?

A Yes, they are.

Q Have you had occasion to determine if the attribution of those remarks to each individual is, in fact, accurate?

A Yes, I have.

Q Are any remarks attributed to Mr. Adam?

A Yes, they are.

Q Are they, in fact, said by Mr. Adam?

A Yes, they were.

Q Are any remarks attributed to Mr. Alterio?

A Yes, they are.

Q Are they, in fact, said by Mr. Alterio?

A Yes.

Q Approximately what time in the evening, if you recall, after you got into the back room area, was this

1
2 conversation monitored?

3 A An hour to an hour and a half. I'm not sure
4 exactly.

5 Q Any idea how long that conversation is in terms of
6 minutes, approximately?

7 A Ten to fifteen minutes, I'd say.

8 Q After that particular conversation is monitored,
9 how long did you stay in the back room area of the Sugar Cone
10 restaurant?

11 A Well, maybe another forty-five minutes.

12 Q Directing your attention to July 25, 1974, were
13 you on duty that day?

14 A Yes, I was.

15 Q Do you know where Mr. DiGirolamo --

16 MR. HANKEN: Excuse me. Was that July

17 25th of 1974?

18 MR. COFFEY: 1973 -- excuse me.

19 BY MR. COFFEY:

20 Q 1973. Were you on duty that day?

21 A Yes, I was.

22 Q Do you know where Mr. DiGirolamo lives?

23 A Yes, I do.

24 Q Where does he live?

25 A I think the address is 26 Texas Avenue or Street

1 in Bridgeport, just off East Main Street.

2 Q Did you have occasion to be there that day?

3 A Yes, I did.

4 Q Did you have occasion to speak to Mr. DiGirolamo?

5 A Yes, I did.

6 Q Did you have occasion to address him?

7 A Yes, I did.

8 Q How did you address him?

9 A "Mr. DiGirolamo."

10 Q At the time you addressed him by name, did anyone
11 else address Mr. DiGirolamo?

12 A Yeah, a woman.

13 Q Did he respond to that address, I guess you could
14 say?

15 A Yes, he did.

16 Q To what name did he respond?

17 A Tok.

18 Q Who is the individual who addressed him as Tok?

19 A Later identified herself to me as his wife.

20 MR. COFFEY: I believe that completes my
21 examination of Mr. McNamara.

22 CROSS-EXAMINATION

23 BY MR. HANKEN:

24 Q Mr. McNamara, do you have any notes --

25 023

2 MR. COFFEY: I am sorry, Mr. Hanken.

3 It is I apologize, your Honor. There is one
4 other area I would like to get into.

5 THE COURT: Very well.

6 MR. HANKEN: Go ahead.

7 FURTHER DIRECT EXAMINATION

8 BY MR. COFFEY:

9 Q Agent McNamara, I show you marked for identification
10 Government Exhibit No. 5 and ask you what that is; not what
11 it purports to show but what it is.

12 A It is a photograph.

13 Q Are you familiar with what is depicted in the
14 photograph?

15 A Yes, I am.

16 Q Is the photograph a fair and accurate representa-
17 tion of the objects depicted therein?

18 A Yes, it is.

19 Q I show you marked for identification Government
20 Exhibit No. 6 and ask you what is that object.

21 A It is a photograph.

22 Q Does the photograph fairly and accurately depict
23 the objects shown therein?

24 A Yes, they do.

25 Q I show you Government Exhibit No. 7, and I will

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CERTIFIED STENOTYPE REPORTERS

ask you what that object is.

A It is a photograph.

Q Does that photograph fairly and accurately depict the objects photographed therein?

A Yes, they do -- yes, it does.

Q What are they photographs of?

A They're photographs of the Sugar Cone ice cream parlor, Newtown -- Monroe, Connecticut.

MR. COFFEY: I would offer them, your Honor.

MR. HANKEN: May I see them?

MR. COFFEY: Yes.

BY MR. COFFEY:

Q Under whose direction were these photographs taken, Agent McNamara?

A Taken under my direction.

Q When were they taken?

A Last Thursday, I believe.

Q Do they fairly and accurately depict the Sugar Cone restaurant, the area of the Sugar Cone restaurant that they do depict, as of June 1, 1973?

A Yes, they do.

MR. HANKEN: I have no objection.

THE COURT: There being no objection,

1 McNamara - direct

34

2 Government Exhibits 5, 6 and 7 may come in as full exhibits.

3 Defense No. 6 was MR. COFFEY: Thank you.

4 (Government Exhibits 5, 6 and 7 for
5 identification received in evidence)

6 BY MR. COFFEY:

7 Q Agent McNamara, I show you Government Exhibit 7
8 first.

9 What does that show?

10 A This is the side view of the Sugar Cone ice
11 cream parlor, which shows the entrance into the restaurant
12 area as well as the entrance into the carry-out or take-out
13 service area.

14 Q Would you hold that photograph so that the
15 members of the jury can see it, please, and indicate where
16 the take-out area is?

17 A The take-out area is here, in the back of the
18 building.

19 Q Now I show you Government Exhibits 6 and 5, and
20 ask you -- first of all, Government Exhibit No. 5 -- what
21 does that depict.

22 A That depicts the rear door of the take-out or
23 carry-out area, which leads into the parking lot.

24 Q And Government Exhibit No. 6?

25 A The same section, with -- taken -- this --

Government Exhibit No. 5 is a side view, and Government Exhibit No. 6 was taken like a face view of the rear door.

MR. COFFEY: All right, thank you.

Thank you, your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. HANKEN:

Q Mr. McNamara, do you have any notes, reports or any kind of memoranda with regard to your investigation?

A Yes, I have.

Q All those been turned over to Mr. Coffey?

A Yes, I have.

MR. HANKEN: Do I have them?

Mr. COFFEY: I believe you do.

Q Just one or two questions, sir.

First time you ever met or talked with Mr. Adam was on May 18th of 1973?

A That's right.

Q You had never met him before that?

A No, I had not.

Q You had never talked to him before that?

A No, I did not.

Q You are from Trumbull?

A Yes.

1 2

2 H A R V E Y R I C H A R D A D A M , called as a witness,
3 having first been duly sworn by the Clerk of the Court,
4 was examined and testified as follows:

5 THE CLERK: What is your full name, sir?

6 THE WITNESS: Harvey Richard Adam.

7 THE CLERK: And your address, please?

8 THE WITNESS: 126 Jockey Hollow Road.

9 THE CLERK: And the town?

10 THE WITNESS: Monroe.

11 DIRECT EXAMINATION

12 BY MR. COFFEY:

13 Q Mr. Adam, you have any first name other than your full
14 name of Harvey?

15 A Yeah, Harvey.

16 Q You are known as Harvey?

17 A Right.

18 Q I show you the indictment in this case and ask you if
19 you are the Harvey Adams who's named in that indictment?

20 A Yes, it is. Yes, it is.

21 Q Now, the acoustics in this room may be poor. I'll have
22 to ask you to speak up so that everybody in this room can hear you.

23 A Okay.

24 Q All right?

25 A Yeah.

028

1 3

Adam. - direct

2 Q Could you tell us, please, how old you are?

3 A Twenty-eight.

4 Q Are you married?

5 A And you have an occupation?

6 A Own an ice cream parlor in Monroe.

7 Q What is the name of that ice cream parlor?

8 A Sugar Cone Ice Cream Parlor.

9 Q How long have you run that particular establishment?

10 A Almost four years.

11 Q Do you know an individual by the name of Guy DiGirolamo?

12 A Yes, I do.

13 Q Do you see Mr. DiGirolamo in the courtroom this
14 morning?

15 A Yes, the man with the red shirt.

16 Q And do you know an individual by the name of Carl
17 Alterio?

18 A Yes, I do.

19 Q And can you describe Mr. Alterio, please?

20 A He's big and he looks like a fighter. He's short, but
21 his arms -- he's big like a boxer.

22 Q All right. Now, directing your attention to October
23 1972, where were you employed at that time?

24 A Sugar Cone Icre Cream Parlor.

25 Q And were you engaged in any type of gambling?

Adam - direct

A. Yes, I was. What were you working with today?

Q In what type of gambling were you doing?

A I was betting sports like football.

THE COURT: Keep your voice up.

A. Football, basketball.

THE WITNESS: Can I have some water, please?

THE COURT: Get some water, Mr. Prete. You

continue, Mr. Prete will get you water.

Q In what type of events were you wagering on?

A. Baseball and football.

Q What were the normal amounts and the frequency of your wagering during that period: that is, October, 1972?

A. Sometimes, I bet up to \$2,000 a game.

Q A game?

A. Yeah.

Q Do you know an individual by the name of Angelo DiGirolamo?

A Angelo? Yes, I do.

Q And what relation, if any, is Angelo DiGirolamo to Guy DiGirolamo?

A They're brothers.

Q Do you know Mr. Guy DiGirolamo, the defendant in this case, by any other name?

A Tok.

1 1 5

Adam - direct

S 2 Q In October, 1972, were you wagering with Angelo
E 3 DiGirolamo?

A Yes, I was.

Q How were you wagering with him?

A Over the phone.

Q And how long a period of time?

A It was only a little while, because I beat him for a lot
of money, I was betting with him, and he -- and he lost about
\$11,000, I won from him.

Q Were you paid that \$11,000?

A No, I wasn't.

Q Did you ask him to pay you that amount of money?

A Yes, I did.

Q Did he, in fact, pay you at any time?

A No.

Q Now, have you ever had occasion to wager with the
defendant Tok DiGirolamo?

A Yes, I did.

Q And when did you first start wagering with him?

A It was a couple months, about three months after
that, couple months after that.

Q Is there any event or day which fixes in your mind
the approximate time?

A January. January.

031

1 6

Adam - direct

2 Q Of what year?

3 A '73.

4 Q Now, as a -- what type of events were you wagering with
5 him?

6 A Football.

7 Q Is football being played in January?

8 A Yeah, Super Bowl.

9 Q And do you know today whether you won or lost money
10 that were you were wagering with the defendant?

11 A I lost \$10,000, approximately.

12 Q Did the defendant indicate to you that you should pay that
13 amount of money in January, 1973?

14 A Yes, he did.

15 Q What did you indicate to him?

16 A I told him if his brother owes me the money, so why
17 should I pay him?

18 A JUROR: I'm sorry, I didn't hear that.

19 THE WITNESS: My brother --

20 (Answer read.)

21 THE COURT: Keep your voice up, Mr. Adams.

22 A Then Tok just let it go for a couple of months and
23 he didn't bother me, you know, for a while.

24 Q Now, directing your attention to the months of February,
25 March, 1973, two months following the Super Bowl, did you have any

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1 7

Adam - direct

2 contact either in person or telephonically with the defendant?

3 A Yes, I did.

4 Q And how frequent was that contact?

5 A Not too long, it was just stopping in or calling on the
6 phone, see how I was doing, you know, if I had the money of if I
7 didn't have the money.

8 Q Was the defendant indicating to you that you should pay?

9 A Yes.

10 Q The money you owe?

11 A Yes.

12 Q Do you know where the -- Mr. DiGirolamo lived at that
13 time?

14 A Texas Avenue, Bridgeport.

15 Q Did you have occasion to go to his home at any time?

16 A Yes, I did.

17 Q During the months of February and March, did you have
18 occasion to go to his home?

19 A I don't think so. I'm not sure.

20 Q Do you recall if you were ever at his home for the
21 purpose of discussing the amount of money you purportedly
22 owed to Mr. DiGirolamo?

23 A Yes. I went over there -- see, I got some money for
24 land I sold in Brookfield.

25 MR. HANKEN: Your Honor, we're wandering a little

Adam - direct

bit.

Q The question was ---

THE COURT: All right. The objection is sustained,
listen to the question, just answer the question.

THE WITNESS: Okay. Go ahead.

Q. Do you recall if you had occasion, yes or no, to go to his home to discuss the amount of money you owed to him?

A Yes.

Q Now, would that be after March of 1973 or before March of 1973?

A After.

Q Do you recall what month that was?

A. No, I don't. I forgot.

Q. Did you go with anyone else?

A Yes. My wife.

Q And what is her name?

A. Gail Adam.

Q And what was her name at that time?

A Gail Casserta.

Q. And when you went to Mr. DiGirolamo's home, did you have a discussion with him?

A Yes, I did.

Q Do you recall what that discussion involved?

A Yes, Well --

1 9

Adam - direct

2 Q All right. Mr. Adam, would you tell us, please, what
3 you said to Mr. DiGirolamo?

4 A Well, he called me up first, it was in the afternoon
5 he called me up.

6 Q What did he say to you?

7 A He said something about -- he says: "I know you sold
8 some land, and I know you have some money now, you got to pay me."
9 And when he said that, I was realy busy, so I says: "I'll come
10 down and see you tonight," and I hung up the phone.

11 Q Now, before you went down to see him that evening, you
12 had, in fact, received some money from a land sale?

13 A Yes.

14 Q What type of sale was that?

15 A We sold 36 acres of land in Brookfield for a hundred
16 and ten thousand dollars.

17 Q And when you say "we" --

18 A There was five partners.

19 Q Did you realize yourself personally any money from that
20 sale?

21 A Yes, I did; 12,000.

22 Q Were you married at that time?

23 A Yes, I was.

24 Q Was that to Gail Casserta Adam?

25 A Genevieve Toner.

1 10 Adam - direct

2 Q And what was the status of your marriage at that time?

3 A I was really a sick gambler, and we split up, and
4 I had two kids, and I lost the kids.

5 Q When was your divorce?

6 A It was '73.

7 Q Now, at the time you went to see Mr. DiGirolamo at his
8 home somewhat after March of 1973, did you own free and clear
9 the assets which you had at that time?

10 A Yes.

11 Q Now, what conversation did you have with Mr. DiGirolamo
12 concerning the debt you owed?

13 A Well, I brought him a piece of paper like this, it was
14 divorce papers, there was a lot of big words on it, and I handed
15 that to him, and I says: "My money's all tied up," I says, "Just
16 read the form."

17 And he read it and he took it as -- he read it as a
18 document that the money was tied up, but it wasn't a document,
19 it was just divorce papers. So that got me a couple more months,
20 you know, relaxation.

21 Q What did you tell him you would do, if anything, with
22 respect to paying?

23 A Pardon me, I didn't hear you.

24 Q What did you tell him as you left his house that
25 evening; what was the final arrangement, if anything, left

1 11

Adam - direct

2 between you?

3 A As soon as I got the divorce settlement and everything,
4 I would pay him.

5 Q Now, after that visit to his home, do you recall when
6 he next contacted you or you contacted him, or you discussed
7 anything with him?

8 A I've forgotten.

9 Q Directing your attention to May, 1973, do you recall
10 you spoke with him during that month?

11 A Yeah, I spoke to him on the phone. He called me up,
12 he says I better have something for him, "Even if you go steal
13 me from your father," he says, "I've got to have something,
14 you got to start paying something."

15 Q What did you tell him?

16 A I told him I couldn't do it, my father was checking
17 books, and I robbed enough money from my father, I robbed
18 my father almost blind for these people.

19 Q Was there any discussion of what would happen if
20 you did not get pay?

21 Q Yes, I was going to get my brains busted by Carl.

22 Q Who told you that?

23 A Tok.

24 Q On the phone?

25 A Yeah.

2 Q Subsequent to that conversation, did you have
3 occasion to meet with Mr. Alterio?

4 A Yes, he came up the ice cream parlor.

5 Q Did you expect him?

6 A Not that -- yea. Not the first time he came up, no.

7 Q What occurred? Tell the ladies and gentlemen of the jury
8 in your own words what occurred when Mr. Alterio came into the
9 ice cream parlor?

10 A Well, I was real scared, and I told him --

11 MR. HANKEN: Excuse me one second. Could you
12 just tell me what date we're talking about?

13 MR. COFFEY: If he knows. He may not know.

14 THE COURT: When was this, do you recall?

15 THE WITNESS: No, I don't.

16 THE COURT: Whatmonth was it?

17 THE WITNESS: I'm not sure.

18 MR. COFFEY: If I can have a minute, your Honor.

19 Q Let me ask you, Mr. Adam, do you know an individual
20 by the name of James McNamara?

21 A Yes, I do.

22 Q Do you see him in the courtroom today?

23 A Yes, I do.

24 Q Point him out, please?

25 A That gentleman with the red tie on in front.

1 13

Adam - direct

2 Q Do you know what he does for a living?

3 A He's an FBI agent.

4 Q Did you ever have occasion to discuss with Mr. McNamara
5 this particular case?

6 A Yeah, that's -- I called him up. I called him up for --

7 Q Now, how much -- what was the length of period, how many
8 days had gone by between the time you first got this call from
9 Tok where you were going to get your brains smashed in, or whatever
10 the phrase was, and the time you contacted Mr. McNamara?

11 A It was like on a Tuesday to a Friday.

12 MR. HANKEN: I object, your Honor, has the witness
13 exhausted his total recollection, independent recollection,
14 as to whether he can recall when Mr. Alterio was there?
15 I mean, if so, I don't mind your refreshing it, but he
16 said he can't remember.

17 MR. COFFEY: I believe the witness testified he
18 couldn't recall the month, your Honor, and I want to
19 refresh him on the date.

20 THE COURT: If this is something to refresh his
21 recollection, it may refresh him.

22 Q Mr. Adam, I show you marked for identification Government
23 Exhibit No. 8, and direct your attention to the last paragraph,
24 and ask you -- the question is: does it refresh your recollection
25 on when Mr. DiGirolamo called you? I'm requesting a yes or no

1 14

Adam - direct

2 answer whether it does refresh your memory.

3 A What was the question, again?

4 Q The question is: Does that refresh your memory as to
5 the month and the year that Mr. DiGirolamo first called you up
6 and conveyed this threat to you?

7 A I'm not --

8 Q The answer is yes or no.

9 A No.

10 Q All right. When you first spoke with Agent McNamara,
11 was that in the same month that you also received a call from
12 Mr. DiGirolamo?

13 A Yes.

14 Q Do you know what month you spoke to Mr. McNamara,
15 Agent McNamara?

16 A I'm going to tell you the truth, I forgot all the
17 months, I did.

18 Q I direct your attention to the bottom area of Government
19 Exhibit No. 8 and ask you if that refreshes your memory on when
20 you spoke to Agent McNamara?

21 A 22nd of January.

22 Q Would you look at it, please, sir?

23 A That's 5/22.

24 Q 5/22/73. Do you know what the number 5 stands for?

25 A Yeah, the months, but I don't know what month it is.

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905 CHURCH STREET

Adam - direct

Q Would you accept the fact that May is --

MR. HANKEN: I'll object, your Honor.

THE COURT: He said he doesn't know what the fifth month of the year is.

Q Sir, would you please silently count to yourself and determine what the fifth month of the year is?

A I don't really know the months. To count on my fingers, I don't.

Q Let me ask you this: Do you recall the month that Mr. Alterio came in to see you for the first time?

A In May. May.

MR. HANKEN: Your Honor, I think he testified he couldn't recall.

MR. COFFEY: This is a different visit. It may be the same time, your Honor --

THE COURT: Well, objection is overruled. Go ahead, he's already answered, he said: May.

Q Do you recall the day?

A It was Tuesday, I think, Tuesday or Friday.

Q And do you recall what day of the month it was?

A I remember now. He called me on Tuesday, and I called Mr. McNamara the 22nd of May.

Q Prior to calling Mr. McNamara, did Mr. Alterio come in and visit you at the Sugar Cone?

S 2 A Yes, he did.

E 3 Q Do you recall the day of the month?

A 4 A It was a Tuesday.

2 5 Q Yes, sir. Do you recall whether it was the 1st or the
3 6 15th or the 30th?

4 7 A It was the 15th.

5 8 Q Are you sure?

6 9 A I'm not positive.

7 10 Q While that exhibit is being marked, Mr. Adam, when
8 11 Mr. Alterio did come in, did you have a conversation with him?

9 12 A Yes. He told me he had -- I had to pay something or --
10 13 or I was going to get hurt, you know. I just had to pay something,
11 14 I couldn't let this thing go away.

12 15 MR. HANKEN: Your Honor, I'll have to object. I
13 16 have to have some time specified because I'm faced
14 17 with an indictment.

15 18 THE COURT: Let's try to tie it down.

16 19 MR. COFFEY: Your Honor, I think I can.

17 20 THE COURT: All right.

18 21 Q Mr. Adam, I show you Government Exhibit No. 9 for
19 22 Identification, and ask you if you recognize that document?

20 23 MR. HANKEN: May I see what document he's looking
21 24 at?

22 25 A This is when I was on the --

042

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Adam - direct

2 THE COURT: The question is: Do you recognize it?

3 A Yes, I do.

4 Q All right. Would you turn to page 12, please?

5 Do you have any trouble reading, Mr. Adam?

6 A Yeah. I'm supposed to wear glasses.

7 Q Can you read without your glasses?

8 A Not too good.

9 Q Can you make out what the words --

10 A Yeah.

11 Q Would you read pages 11 and 12, please, and after you
12 read it, the question is: Does that refresh your memory as to the
13 date that Mr. Alterio came in to see you at the Sugar Cone for the
14 first time?

15 A I can't make out some of the words.

16 Q Do you have your glasses with you?

17 A No, I don't.

18 Q Do I understand you can't read it at all?

19 A No, my eyes go blurry, I start reading, then they go
20 blurry, I can't read the letters at all. The words. I could read
21 'em, and then I can't read 'em.

22 Q All right. Do you have a calendar with you, sir?

23 A Yeah.

24 Q Would you take the calendar out, please?

25 Without straining your eyes, are you able to read the

Adam - direct

calendar?

A Yeah.

Q Did there come a time, sir, when you met with Agent McNamara at the Sugar Cone Restaurant when a conversation was recorded?

A Yes.

Q Do you know what day that was?

A It was a Friday night.

Q Do you know what month it was?

A Let me see.

MR. HANKEN: Your Honor, may I ask if he's reading that calendar so as to be able to figure out the months, or -- this year's calendar or last year's calendar?

THE COURT: You can cross, if you wish, later. He's looking at the calendar, I guess. Are you able to tell us when that recording was made?

MR. HANKEN: It's just that, your Honor, I don't know what's written on it. I don't know if notes on -- or what exactly he's reading from.

MR. COFFEY: Glad to have you look.

MR. HANKEN: I'd like to save a trip up there.

Q Is it a calendar of 1973?

A I knew all this. I knew all this. I'm so nervous I can't concentrate.

044

SANDERS, GALE & RUSSELL
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HARTFORD, CONNECTICUT

905 CHURCH STREET
NEW HAVEN, CONNECTICUT

Q Can you tell us, sir, when the recording was made, the conversation was recorded, and using that as a fixed point, whatever day it was -- and directing your attention to the visit by Mr. Alterio, how much time was between Mr. Alterio's visit on that first occasion and the recorded conversation which was conducted between you and Mr. McNamara -- or with you --

A He came in on a Tuesday or Wednesday, and I told him to come back on a Friday, the first time when I called Mr. McNamara, they just left, they missed 'em, so the second time we had him we put this recorded on me, he taped it up and the thing kept on falling, and it kept on falling.

Q And this was the second occasion?

A That was the second occasion.

Q Mr. McNamara was there?

A Right.

Q Do you know an individual by the name of Richard Lester?

A Yes, I do. Your Honor, I think

Q What does he do for a living?

A He's an FBI agent.

Q Did he have occasion to be on your premises during one of these instances you are talking about?

A That Friday night when I was taped, Richard was sitting with me, we were at the take-out section, and he was like -- had a hat on and just like all my help wears, and he was just watching

045

SANDERS, GALE & RUSSELL
CERTIFIED STENOTYPE REPORTERS

2 ms.

3 Q Did Mr. McNamara come to your Sugar Cone Restaurant on
4 a subsequent occasion?

5 A Yes, he did.

6 Q And was a recording made?

7 A Right. There was.

8 Q And how many days between the time Mr. Lester was
9 there and the time Mr. McNamara actually recorded a conversation?

10 A Next time, a week after.

11 Q The following Friday?

12 A Following Friday.

13 Q All right. Now, a conversation was recorded on a Friday
14 by Mr. McNamara?

15 A Yes, it was.

16 Q The previous Friday, Agent Lester was there, and the
17 previous Friday was the time that Mr. Alterio came?

18 MR. HANKEN: I will object, your Honor, I think
19 a little leading, I don't mind, but that's a little
20 too much.

21 THE COURT: Overruled. I think all this information
22 is interwoven into everything he's been saying for the
23 last 20 minutes, on time.

24 Q Is that correct?

25 A Right. Could I explain something?

046

1 1 21

Adam - direct

S 2 Q Let me ask you the questions, sir.

C 3 A Okay.

H 4 Q Are we, then, talking about approximately three
Z 5 consecutive weeks?

S 6 A Right.

T 7 Q All right. Now, when Mr. Alterio came in on that first
E 8 occasion, what did you respond to him when he asked for the money?

Q 9 A Well, I was all wired up and everything.

O 10 Q Was this on the first occasion, sir, or the second
H 11 occasion?

S 12 A First one, I was wired up, but the tape didn't stick,
S 13 because I was sweating like a pig, it was just pouring off me, I
S 14 was so scared, and Carl came.

MR. HANKEN: I'll object, your Honor, I'll ask
that that be stricken, that wasn't responsive to the
question.

THE COURT: Yes, it may be stricken.

Q 19 Mr. Adam, did Mr. Alterio have occasion to come into your
ice cream parlor at a time before you had ever contacted the FBI?

A 21 Yes, he did.

Q 22 Was that the first occasion?

A 23 Yeah, he came in with Louie Piazza.

Q 24 Can you tell me, sir, if you recall, on the first
occurrence that you saw Mr. Alterio in your ice cream parlor if he

047

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750 MAIN STREET
HARTFORD, CONNECTICUT

805 CHURCH STREET
NEW HAVEN, CONNECTICUT

1
22

Adam - direct

2 was with anyone?

3 A No, he wasn't.

4 Q All right. Now, I'm asking you so that we can take
5 these difference occurrences in chronological order. After Mr.
6 DiGirolamo called you, did Mr. Alterio come into your shop?

7 A Yes, he did. He wanted some money.

8 Q On the first occasion, was he with anyone?

9 A He came in with Louie Piazza on the first occasion,
10 I'm not sure you -- I'm almost positive.

11 Q What did Mr. Alterio say to you?

12 A They came in for some ice cream, and this Louie Piazza
13 said --

14 MR. HANKEN: I'll object to what Mr. Piazza says.

15 THE COURT: Yes, sustained.

16 Q Mr. Adam, at the time --

17 MR. COFFEY: -- thank you --

18 Q -- at the time Mr. Piazza came into your shop, had you
19 already met Mr. McNamara at this time?

20 A No. That do. You know you witness she witness at least

21 Q Are you sure?

22 MR. HANKEN: Your Honor, he's, in a subtle way,

23 trying to put words in the witness' mouth, and he says:
24 no, and then Mr. Coffey says: are you sure, is designed
25 to prompt him.

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2 THE COURT: Overruled.

3 Q On that occasion that Mr. Piazza came into your store
4 with Mr. Alterio, after that conversation was completed, did you
5 call anyone?

6 A I called Jim McNamara. I called McCarthy first.

7 Q Had you already met Mr. McNamara at that time when you
8 placed the call?

9 A The week before.

10 Q Now, at a time prior in my questioning of you, I asked
11 you if Mr. Alterio ever came into your shop before you had
12 ever met any agent of the FBI, had he?.

13 A Yes.

14 Q All right. On that occasion, the first occasion, what
15 did he say to you?

16 A When he came in by himself? He said to me -- we
17 went in the back room --

18 MR. HANKEN: Your Honor, I object.

19 THE COURT: Now, I'm not sure what month or what
20 year we're in. You know you placed the wager, at least
21 according to your testimony, with Mr. DiGirolamo in
22 January of 1973, is that correct?

23 THE WITNESS: Yes.

24 THE COURT: Is that correct, you know that?

25 THE WITNESS: Yeah.

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2 Adam - direct

3 THE COURT: And we know you went to Mr.
4 DiGirolamo's house, at least according to your
5 testimony, in March, 1973, right?

6 Did you first meet Mr. Alterio after you went to
7 Mr. DiGirolamo's house? Or had you known him before?

8 THE WITNESS: I known him before.

9 THE COURT: All right. Go ahead. Objection
10 sustained.

11 Q Did there come a time --

12 THE COURT: We'll have to tie down these -- at
13 least a reasonable time.

14 MR. COFFEY: I'm certainly trying, your Honor.

15 THE COURT: Yes, I know you are.

16 Q Did there ever come a time when you discussed with Mr.
17 Alterio the debt you owed to Mr. DiGirolamo?

18 A Yes.

19 Q Did any such discussion occur at the Sugar Cone Ice
20 Cream Parlor?

21 A Yes, it did.

22 Q Did any such discussion occur at the Sugar Cone Ice
23 Cream Parlor?

24 A Yes, it did.

25 Q You previously testified at some point Mr. DiGirolamo
called you and threatened you concerning this debt?

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SANDERS, GALE & RUSSELL
CERTIFIED STENOTYPE REPORTERS

2 MR. HANKEN: I'll object -- oh, I'll object to
3 that little summary, your Honor.

4 THE COURT: Yes, sustained. Sustained.

5 Q. Can you tell the ladies and gentlemen of the jury, if
6 you can recall, the month that Mr. Alterio first came into your
7 shop in which you had a discussion with him concerning the debt
8 you wed to Mr. DiGirolamo?

9 A. I don't know the month, but when he came in, he took me
10 in the back room --

11 Q. All right. So we have to proceed, questions and answers.
12 So you don't recall the month?

13 A. No, I don't.

14 Q. There came a time -- what -- did the time come when
15 you met Agent McNamara?

16 A. Yes, there was.

17 Q. Now, did you first talk with Mr. Alterio concerning
18 the debt you owed to Mr. DiGirolamo before or after you had met
19 Mr. McNamara?

20 A. Before.

21 Q. Now, how much before?

22 A. It was a couple of days.

23 Q. Now, my question is: At that time, was Mr. Alterio
24 alone?

25 A. He came in with -- yeah, that time he was.

2 Q And what conversation, if any, did you have with
3 Mr. Alterio concerning that loan?

4 A He took me in the back room, and he says: "Harvey,
5 you have to pay something, and that's all. I got -- Tok
6 sent me up here to get anything, a hundred dollars I supposed
7 to give him, but," he says, "I'm going to take it out in stuff
8 and whatever," so I gave him \$20, I'm so scared, that's all I
9 had on me, I gave him \$20, and then he says, "Okay, I be back
10 next week."

11 Q What did you do as a result of that conversation?

12 A I called Mr. McNamara right away. Mr. McCarthy.

13 Q Mr. McCarthy?

14 A Mr. McCarthy.

15 Q Who is Mr. McCarthy?

16 A He's a friend of my father's.

17 Q What does he do for a living?

18 A He's an FBI agent.

19 Q And as a result of talking to Mr. McCarthy, who did
20 you talk to, if anyone?

21 A Jim McNamara.

22 Q And what did you tell Mr. McNamara?

23 A I told him what happened, and I told him he's
24 going to be back Friday, and he says, "Don't worry about a thing,
25 I'll take care of you."

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2 Q. And did Mr. Alterio come back that Friday?

3 A. Yes, he did.

4 Q. And was the FBI there when he came back?

5 A. They're all over.

6 Q. What was said on that occasion?

7 A. Well, that's the time he came in, he just came in and
8 taped up --

9 MR. HANKEN: I'll object, your Honor, until the
10 time is specified, until the date is specified.

11 THE COURT: I think we narrowed it down.

12 Can you remember the exact date?

13 THE WITNESS: No.

14 THE COURT: All right. But I think there's
15 testimony in now when the tape recorded -- recording
16 was made through Mr. McNamara, and we're proceeding
17 now withthat -- enough reference for the jury to know
18 what period of time, if not the exact date that we're
19 talking about. Objection is overruled.

20 Q. What conversation did you have with Mr. Alterio on that
21 second occasion he came into your shop?

22 A. Well, the second time we went -- in the take-out area
23 again.

24 THE COURT: Keep your voice up.

25 A. We went out in the take-out area, and he said I had to

1
2 pay him, he kept on throwing his finger in my face and
3 punching his hand.

4 MR. HANKEN: I can't hear you.

5 THE WITNESS: He kept on throwing his finger
6 in my face like he was going to kill me.

7 MR. HANKEN: I'll object to that characterization,
8 your Honor.

9 THE COURT: Sustained. The jury is instructed
10 to ignore the remark of the witness; just tell us what
11 he did or said.

12 THE WITNESS: He said I have to paying him something
13 or else I'm going to get busted up, and he just kept
14 on punching his hand, and he kept on looking at
15 me real, you know, like he looked -- he just looked
16 at me really like -- like stone face.

17 MR. HANKEN: I'll object, your Honor.

18 Q Would you tell the ladies and gentlemen of the jury
19 what your own state of mind was at the time you were talking
20 to Mr. Alterio? Do you understand the term "state of mind"?
21 Right.

22 A I was so nervous, that even with all these FBI agents
23 that didn't -- I was even more nervous then, too, because he
24 scares me, he's really a strong person.

25 Q Now, was Agent Lester there on that occasion?

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2 A Yes, he was, he was downstairs.

3 Q Where was he?

4 A He was right alongside of me, he was on the counter
5 like he was scooping ice cream, and I was over there, but he could
6 have taken both of us.

7 Q How big is Agent Lester?

8 A About as big as you.

9 MR. HANKEN: I didn't hear that.

10 THE COURT: He says he's about as big as I am.

11 While Mr. Coffey is getting the photographs, one
12 think I didn't mention, and I will explain, I don't
13 want to interrupt Mr. Coffey's presentation, but one
14 think I didn't explain, ladies and gentlemen, yesterday,
15 is that jurors are not permitted to take notes. I'll
16 tell you why at the end of the session, I don't want to
17 interrupt. Some judges allow it in some districts,
18 but this district, it's been a custom not to permit
19 it, and I will tell you why later.

20 Go ahead, Mr. Coffey.

21 Q Mr. Adam, I show you Government Exhibit 7 and ask you
22 if you recognize that picture?

23 A This my ice cream parlor.

24 Q Is that how it appeared last year, 1973?

25 A Yes.

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S 2 Q Is that how it appeared at the time you were talking
E 3 with Mr. Alterio on this occasion?

A 4 A Yes.

E 5 Q I show you Government Exhibit No. 5 and ask
C 6 you if you recognize that that picture depicts?

S 7 A This is exactly where we were, where we were talking.

S 8 Q Now, when you say "we were talking", who is that?

R 9 A I'm sorry. Me and Mr. Alterio.

O 10 Q All right. And I show you Government Exhibit 6.
H 11 What's that depict?

S 12 A Same thing. Same scene, but different side, different
E 13 view.

H 14 Q What time of night was this that you were having
S 15 this conversation with him?

O 16 A It was -- it was dark. It was about 10 o'clock.
I 17 I'm not positive about the time. It was dark. It was at night.

S 18 Q And did you have any other conversation with Mr.
R 19 Alterio?

O 20 A Well, we were talking in -- that -- wait a minute,
I 21 now. I got lost. Mixed up. What was the question again?

S 22 Q Excuse me. I'm asking what other conversation, if
C 23 any, you had with Mr. Alterio.

O 24 A Well, after this, he -- he was just, you know, kept on
I 25 pounding his hand, pointing his finger, and then he -- then he

took off, and the FBI agents came in, they didn't pick him up or nothing, is that what you meant?

Q Do you recall if there was any discussion between you --

MR. HANKEN: Your Honor, I'll object, obviously trying to lead the witness now.

THE COURT: I haven't even heard a question asked, so I can't rule on it. Ask your question.

MR. COFFEY: Thank you.

Q Do you recall if as a result of that conversation you did anything with respect to staying at the ice cream parlor? Is that clear?

A I stayed at the ice cream parlor, yes.

Q And did the agents stay with you?

A Yes, they did.

Q What time did you close the ice cream parlor?

A Oh. I start remembering. It was -- when we having this conversation, me and Carl, he says: "I'll be back at 11 o'clock when you close, we'll see whether you are going to pay or not," then when I closed the doors at night, there were all FBI men in my place, and like the lights were dim back there, and I was walking around, you know, so he could see me, but he never showed up, he never came back.

Q Now, after that particular conversation with Mr.

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Alterio, did you have occasion to speak with him again?

A Yes.

Q When?

A It was on a Wednesday. He came in with Louie Piazza, I'm not sure of the date, but that was the time and Lou --

Q How long did they stay in your ice cream parlor?

A Not too long, Louie --

Q Sir, you can't state what Mr. Piazza said. Where did you see them go, if anywhere, after they left your ice cream parlor?

A Well, they came in -- they went right around -- right around the counter, went down -- not downstairs, in our take-out area, and the guy made them a few ice cream sundaes and banana split, and I says, "Aren't you going to pay for that, Carl?"

And he says, "Yes, come on, take it out of my pocket." That means he ain't paying.

MR. HANKEN: Your Honor, I'll object to this.

THE COURT: Just tell us what he said.

THE WITNESS: That's what he said, then he left, and he didn't pay.

Q Did you have occasion to meet with him again?

A He called me about two hours later, he says, "You can get the FBI, you can get anybody you want, you are paying," and he slammed the phone up.

Q After this particular meeting with Mr. Alterio, do

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SE 1 33

Adam - direct

PLA 2 you recall if you had occasion to speak at any time with Mr.
3 DiGirolamo?

A 4 Tok called me up.

Q 5 How soon after this incident?

I 6 A I think it was a couple days later, or a day later,
7 he says --

Q 8 What did he say to you?

9 A He says: "Harvey," he says, "I don't care if you get
10 me it from your father's store, I don't care what you get, but
11 you are going to have to pay this," and I says -- I told him
12 I couldn't.

13 He told me, "Well, Carl's coming up, and I can't
14 control him any more." That means, like --

15 Q That's what he said?

16 A Right.

17 Q What did you respond to that?

18 A Well, I figured I better get -- I better call up Mr.
19 McNamara and have him -- you know, have him come down, because
20 I was scared.

21 MR. HANKEN: I'll object, your Honor, and move the
22 last part be stricken.

23 THE COURT: Right.

24 Q What was your state of mind, and what was your mental
25 reaction by that remark by Mr. DiGirolamo?

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2 A It scared me real up.

3 Q Did you call Mr. McNamara?

4 A Really fast.

5 Q And as a result of calling Mr. McNamara, do you recall
6 if you saw him that day?

7 A Yeah, he came right up.

8 Q Was he alone?

9 A No, they had about four guys.

10 Q And did you have a discussion with Mr. McNamara?

11 A Yes. He told me -- first, he tried to calm me down.

12 MR. HANKEN: I'll object to what Mr. McNamara
13 told him.

14 THE COURT: Sustained.

15 Q And at that time --

16 MR. COFFEY: -- withdraw that phrase, please.

17 Q I show you Government Exhibit No. 1 and Government
18 Exhibit No. 2 for Identification, and ask you if you recognize
19 those objects?

20 A Yes, I do.

21 Q On the occasion that you just described where you
22 called Mr. McNamara and he came up, after talking to Mr.
23 DiGirolamo, did you see either one of those objects that day?

24 A I seen both of them.

25 Q All right. And would you describe what involvement you

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had, if any, with those items?

A. Well, I had this one on my body, it's a microphone, it was taped on my body, but the tape kept on falling off, so I kept going back to the back room, telling him: put it on better, and then they taped our conversation.

Q And did you know it was being taped?

A Yes.

Q Did you consent to that recording?

A Yes.

Q With whom did you have a conversation in which a conversation was recorded?

A Carl.

Q I show you Government Exhibit No. 3, and ask you if you recognize that object?

A Yes. This is the tape.

Q Have you listened to that tape?

A Yes.

Q When was the last time you listened to it?

A Yesterday.

Q Was that the conversation you had with Mr. Alterio?

A Exactly.

Q Exactly? Harvey, you have in

A Yes.

Q And I show you Government Exhibit No. 4, and ask you

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Adam - direct

2 if you recognize that document?

3 A Yeah, this the one you gave me to study.

4 Q Did you read it?

5 A Yup.

6 Q Did you compareit with that cassette recording?

7 A Yup.

8 Q Is it a fair and accurate transcript of that recording?

9 A Yes.

10 Q Now, please tell us, Mr. Adam, in your own words, what
11 was said in that conversation which was later recorded and
12 reduced to a transcript, your general recollection?

13 A My general recollection, Carl was threatening me.

14 Q How did he threaten you?

15 A Well, he kept on pointing his finger -- see, I knew
16 Carl, whens he pointed his finger, that means --

17 MR. HANKEN: I'll object to his explanation,
18 your Honor.

19 THE COURT: Sustained.

20 Q Tell us what he did.

21 A Pointing his finger at me and said, "Harvey, pay me
22 or else you are going to get your head busted," and he kept
23 pounding his fist real hard. He said, "Harvey, you have no
24 other way," he said, "you got to pay it." He said, "Tok sent me
25 up here," he said, "you got to pay it off, got to pay it."

2 Q Was the name Tok used by Mr. Alterio?

3 A Yes.

4 Q Was the name Tok used by you?

5 A Yes.

6 Q To whom did that refer, sir?

7 A Guy -- Mr. DiGirolamo.

8 Q The gentleman over there with the blue suit and the
9 red shirt?

10 A Right.

11 Q And was there a specific discussion about the debt
12 you owed to Mr. DiGirolamo?

13 A Yes.

14 Q Do you recall what Mr. Alterio said about that debt?

15 A He says, "Well, you owe him \$10,000," and I kept on
16 claiming his brother owed me eleven, so that just -- one -- if his
17 brother ain't going to pay me, why should I pay him, it's not
18 fair; I told him that, but I was scared telling him that,
19 because I had four FBI guys around me.

20 MR. HANKEN: I move that go out, your Honor.

21 THE COURT: It may go out.

22 Q It's an important rule of law that you just answer
23 the question asked. Can you do that?

24 A Right.

25 MR. COFFEY: At this time, your Honor, I would

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Adam - direct

2 offer Government Exhibit No. 3, the cassette recording,
3 and Government Exhibit No. 4, the transcript.

4 THE COURT: Any objection?

5 MR. HANKEN: Your Honor, I'd just like to know
6 from the witness whether or not he has exhausted
7 his total recall as to his conversation.

8 THE COURT: I think that's a fair question to
9 ask him.

10 Have you now told us your best recollection of
11 what was said between you and Mr. Alterio?

12 THE WITNESS: Yes.

13 THE COURT: Any objection?

14 MR. HANKEN: I have none.

15 MR. COFFEY: It will take it five minutes to set
16 it up, your Honor.

17 THE COURT: Let's get everything set up, but let's
18 not take the time of the jury to do it, because I can
19 release them for lunch, and by the time you get back,
20 we'll have the tape set up for you to hear. I'll stay
21 on the bench for a minute. I'll release the jury until
22 about 2:05 or 2:10, we'll resume at that time, give
23 the agent a chance to set this up.

24 Please don't discuss this case, as I mentioned.

25 You are excused.

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Adam - direct

2 (Jury excused at 12:50 p.m.)

3 THE COURT: I just thought I'd put on the record
4 before the tape be played, that I had asked counsel,
5 as the record will note, to listen to the tape
6 yesterday afternoon and compare it to the transcript
7 for accuracy and authenticity.

8 It was reported back to me by counsel for the
9 defendants that they did listen to the tape, and that
10 they had found it to be clear and audible enough so
11 that the -- they could represent that the transcripts
12 were accurate reproductions of what was heard by them
13 from the tape.

14 However, since there's no objection to the tape
15 being played, there's no necessity for the Court to
16 double check counsel. We have had Mr. McNamara
17 testifying to authenticity and accuracy. We had Mr.
18 Adam, and in addition, counsel themselves have heard
19 the tapes -- heard the tape and have verified the
20 accuracy of the transcript, but I thought the record
21 should note that in view of the Bryan case.

22 MR. COFFEY: Your Honor, may I ask -- I just suggest
23 as a small item, the Court may not think it's important,
24 but because of the overwhelming language used, I would
25 ask the Court perhaps to inform the jury that they're

2 about to hear it, and please realize that's what was
3 recorded, and not to take that as prejudicing either
4 defendant, since he uses it, he's a government witness.

5 MR. HANKEN: The defendant never used it.

6 The other defendant.

7 MR. COFFEY: I'm sorry. Mr. Alterio.

8 MR. HANKEN: I should point this out to your
9 Honor, that I didn't object to the tapes coming in on
10 the grounds of authenticity or anything else, but I
11 still would like my objection noted that these conversa-
12 tions which Mr. Alterio is being engaged in relate,
13 I presume, to a conspiracy count, I'm still faced with
14 that problem whether or not I'm talking about the other
15 counts or just the conspiracy, on whether or not
16 a conspiracy has been established at this point.

17 THE COURT: Well, I mean, what is your objection
18 so I can rule on it?

19 MR. HANKEN: Well, my objection would be at this
20 point that there's been no agreement established or
21 conspiracy established or adequate basis to let in the
22 tape recording, aside from authenticity.

23 THE COURT: In other words, you are objecting
24 on the grounds that the statements of Mr. Alterio
25 are admissible in the case against Mr. DiGirolamo?

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CERTIFIED STENOTYPE REPORTERS

2 MR. HANKEN: At this point.

3 THE COURT: All right. What do you say?

4 MR. COFFEY: We would claim, your Honor, both
5 under the law of joint venture where the two individuals
6 engage in a common joint criminal enterprise, statements
7 of one are admissible against the other, that would be
8 with respect to the substantive counts against Mr.
9 DiGirolamo, and also under the laws of conspiracy which
10 state the same thing with respect to count 7, and that
11 this witness' testimony that Mr. DiGirolamo contacted
12 him, told him he was going to send Carl, and Carl
13 contacted him and said he'd been sent by the defendant,
14 clearly establish a prima facie case of an agreement
15 and as a result, all these statements made in
16 furtherance of the collection of that debt are
17 admissible.

18 THE COURT: I agree, and in addition, of course,
19 we have had almost all the conversations with Mr. Alterio
20 and this witness come into evidence without objection.
21 In fact, even including the witness' recollection of the
22 very item that we are concerned with. I'm just -- let
23 me just ask the witness one question.

24 After this conversation that was taped with Mr.
25 Alterio, did you see him again?

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Adam - direct

THE WITNESS: Yeah.

THE COURT: How many more times?

THE WITNESS: Twice.

THE COURT: Twice more.

So that the Court must remark that of the, say, six or seven conversations this witness has had with Mr. Alterio, five or six of them have come in without objection.

MR. HANKEN: Basically, the reason I didn't object was there was no actual tying in of my client with his being there, other than to collect money, and the collection of money is no crime, and to send someone down to collect money is no crime; the crime is to extort money, so if he said to Carl, "Go down there and pick up \$50," and Carl goes down there and makes a threat to get the \$50, if Mr. DiGirolamo had nothing to do with that, then, of course, he would be innocent of anything, conspiracy or otherwise, I think the tapes when that's played, and the transcript, will go into much more detail, much more than these conversations I have heard up to now. Now that we're going to get into tape recording something, the jury can actually read and listen to, certainly, in much more certain form than they've heard thus far, that's what I'm objecting at

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Adam - direct

2 this point.

3 MR. COFFEY: The Court will recall before any
4 conversation with Mr. Alterio, this witness testified
5 he received a call from Mr. DiGirolamo saying, "You
6 are going to pay up or you are going to get your brains
7 beat in, and I am going to send Carl."

8 THE COURT: Yes. I think there's enough, at least,
9 to go to the jury as a factual matter. Of course, your
10 defense could be that Mr. DiGirolamo sent Carl down to
11 collect the money --

12 MR. HANKEN: That's right.

13 THE COURT: -- but he had exceeded any instructions
14 when he threatened Mr. Adam, if, indeed, the jury does
15 find that. And then that becomes a jury question at
16 that point, but I think there's enough here for us to
17 listen to the tape as part of evidence already in
18 without objection, and, of course, in addition to the
19 reason given by Mr. Coffey, so objection is
20 overruled.

21 We'll meet at at about 2:10.

22 (Recess taken for lunch.)

HARVEY RICHARD ADAM, resumed.

(Jury present.)

(Tape recording played.)

DIRECT EXAMINATION CONTINUED

BY MR. COFFEY:

Q Mr. Adam, what was the date of that conversation?

A Date of that conversation? It was in May sometime

9 Q When you refer to an individual by the name of Tok,
10 Alterio spoke of an individual by the name of Tok, to whom
11 were you referring?

A. To that gentleman over there

MR. HANKEN: Mr. Coffey, can I get that straight?

Did he say the conversation we just heard was in May?

MR. COFFEY: He said sometime in May

16 Q Now, after this conversation took place, did you ever
17 have occasion to speak to Mr. DiGirolamo concerning this debt?

A. Yes.

19 Q And how long a period of time elapsed between this
20 recorded conversation and the conversation with Mr. DiGirolamo?

A Couple weeks.

Q And when you had this conversation with him, was it
in person, was it by telephone, or --

A. On the phone.

Q Do you recall what was said during that conversation?

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Adam - direct

2 A Yeah.

3 Q What was said and by whom?

4 A Mr. DiGirolamo was threatening me that I had to get him
5 some --

6 MR. HANKEN: Object to the word "threaten", just
7 relate the conversation.

8 THE COURT: That's right.

9 Q What did he say to you?

10 A He told me --

11 THE COURT: Just a minute. The objection is
12 sustained, the jury is instructed to disregard the
13 characterization "threat".

14 Start over again, just tell us what he said to you
15 and what you said to him.

16 A Well, he says I have to give him something, even if
17 I have to rob from my father, and I have to give him something,
18 money, either money or food or something.

19 Q And what did you indicate?

20 A I told him I wouldn't steal from my father again.

21 Q And what did he indicate as a result of that?

22 A Well, he told me it's out of his hands, that means
23 he's going to send somebody up there to take care of me.

24 Q What else did he say, if anything?

25 A I don't remember.

Adam - direct

2 Q You don't recall anything else being said?

3 A Well, I was supposed to get the meat or the money,
4 or he was going to send Carl up to take care of it.

5 MR. HANKEN: Your Honor, somebody up there --

6 THE COURT: Give us your best recollection of
7 exactly what he said to you and what you said to him.

8 A His exacts words were, you know, I can't take care
9 of him, speaking of Carl, because that's the only one we're
10 talking about, and then he says he'll be up there.

11 MR. HANKEN: May I have that read back, your
12 Honor?

13 (Answer read.)

14 Q All right. Have you ever paid to Mr. DiGirolamo the
15 money you owe to him?

16 A No.

17 Q Has Angelo DiGirolamo ever paid to you the money he
18 owes to you?

19 A No.

20 MR. COFFEY: Thank you.

21 THE COURT: Cross examination.

22

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1 A Yes, Right.

2 Q Do you remember his name?

3 A Frank Mansini.

4 Q You remember it now; am I right?

5 How long did that trial last; do you recall?

6 Q For me, a day.

7 Q And you testified with regard to these bets that
8 were made by you to him? Do you recall?

9 A Yeah.

10 Q THE COURT: Keep your voice up, Mr. Adam.

11 Q So you do recall now at least one other fellow
12 that you were betting with during that period that you were
13 betting with Mr. DiGirolamo?

14 A Yes.

15 Q Were there other people that you were betting with
16 at that time? There's no problem.

17 A I'm not sure. One is the generality and

18 Q You are not sure. Did you ever name them to
19 any grand jury people, that you claimed to have been betting
20 with at that time? With regard to the grand jury,

21 A I'm not sure now.

22 Q You are not sure what you told the grand jury?

23 A No.

24 Q You testified before a grand jury, under oath --

2 by the way, when you testified in the trial in January of
3 1974, you were under oath; isn't that true?

4 A Right.

5 Q And you are under oath now; right?

6 Did you testify under oath to a grand jury in
7 1972?

8 A Yeah.

9 Q And again in 1973? Do you recall?

10 A Yeah.

11 Q Do you recall what month in 1973?

12 A No.

13 Q You have no recollection whatsoever of the month?

14 A No. Have a lot of other problems, too.

15 Q What problems do you have, Harvey? What type of
16 problems do you have?

17 A Well, they're my problems.

18 MR. COFFEY: One is the generality and
19 vagueness of the question; secondly is using the
20 first name of the witness.

21 THE COURT: With respect to the second,
22 perhaps, unless you know him personally -- and
23 even if you do, I think you should refer to him as
24 Mr. Adam.

25 But I will overrule the objection with

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Adam - cross

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respect to his explanation as to why he cannot recall. You may pursue that. I take it that was an explanation as to why he cannot recall these incidents.

MR. HANKEN: I will rephrase the question.
BY MR. HANKEN:

Q Do you have some type of mental problems now--

A No.

Q -- that prevent your recollection of events?

A You go through a divorce, you have a lot of problems with bills and all, you know, that sort of takes your mind away from the gambling world, remembering people.

Q It affects your ability to recall events; isn't that true?

A Yeah.

Q You do not recall events as accurately as you might have --

A Right.

Q -- if your head was clear and your mind clear?

A My mind is clear. If I paid attention to it, I'd be better at it.

Q Paid attention to what?

A To everything that was said at those garages, if I paid more attention.

Adam - cross

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Q October of what year?

A This year.

Q October of 1974?

A of '73.

9 October of 1933

A . . . He was asking me, like "You got the money, you have the money." He just kept going on like that until --

Q . . . Wait a minute. Is this true now? You say that you owed Mr. DiGirolamo -- you owed the money in October of 1973?

A Yeah.

Q When do you claim these threats were made to you by Mr. Alterio?

A May 11th, 12th -- May 11th he came up my place and I told him I didn't have it and he left. Then he came back May 18th. I told him I didn't have it and I says I talked to Tok already, and he says okay. Then he came back the 25th, May 25th, and asked, when the FBI was around. And then he came back June 1st, I think, and that's when they got all the tape recordings and everything.

Q In any of those times you have not mentioned to us whether or not Mr. Alterio told you that Mr. DiGirolamo had told him to either threaten you or hurt you or put you in a hospital or anything to that effect? You have not told us

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that?

you did he use to do?

A Well, I figured the tapes told you that.

Q So what you are referring to is the tape recording?

A That's my voice that was talking.

Q So at least other than the tape recording, Mr.

Alterio never told you that; isn't that true?

A No. He told me other times, too. I worked for Tok, when I see him alone a lot of other times.

Q That was not my question.

A I didn't understand.

Q Did Mr. Alterio ever tell you that Mr. DiGirolamo told him to threaten you or hurt you in any way?

A He told me Tok sent him up there.

Q Please answer my question.

A That's the answer to your question.

Q In other words, when he said "Tok sent me up here" -- didn't you ask him what he meant?

A Tok tells him what to do. That's what that means.

Q Listen to my question:

Did he ever use the words to you that "Tok sent me here to hurt you or to threaten you"?

A Yes.

Q Those words?

A Yes.

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Q When did he use those words?

A Those words there?

Q Yes.

A On the 11th.

Q On May 11th?

A Yes.

Q. I presume you would have told the --

A. I'm not sure when he told.

Q -- the special agents?

A He said it a lot of times, though.

Q Mr. Adam, did you tell this to the special agent?

A I don't think so, no.

Q Were you keeping it a secret from them, though?

Were you lying to them?

A You just asked me the question. That's why I thought of it.

Q Didn't they ever ask you the question?

A : When they -- when I got threatened on the tape

Q Did they ever ask you that question prior to the
training?

A Tim not sure

Q Did you ever tell them this prior to the taping?

A. I might have. I'm not sure.

8 I am going to show you some documents and see if

2 it refreshes your recollection.

3 Q By the way, which agents do you say you told that
4 to?

5 A I didn't say. But Mr. McNamara.

6 Q In other words, you told it to Mr. McNamara, that
7 Alterio told you that DiGirolamo had sent him to hurt you and
8 threaten you?

9 A Yeah, on the tape, that day. That's the question.

10 Q Is that the tape we just heard?

11 A Yes.

12 Q That is the tape from June 1st?

13 A And that's when I told him.

14 Q In other words, it is in the tape recording, you
15 are saying?

16 A Right, plus I must have told him by myself I told
17 you.

18 THE WITNESS: Could I have another glass
19 of water?

20 THE COURT: Yes.

21 BY MR. HANKEN:

22 Q I am going to give you a transcript of the tape.
23 You show me here in the transcript taken June 1st where Mr.
24 Alterio tells you that Mr. DiGirolamo had sent him there to
25 hurt you, Mr. DiGirolamo had sent him there to threaten you,

2
A Only two months.3
Q So it could have been in February that he was
4 asking for the \$10,000?5
A Right.6
Q And then what he would do is call you up and say,
7 "Harvey, would you give me the \$10,000," and you would say
8 no, you do not have it?9
A No, he'd usually say "Harvey, do you have anything
10 you can give me?"11
Q He would put a question to you, "Do you have
12 anything you can give me" --13
A Right.14
Q -- "on the ten thousand?"15
A Right.16
Q And what would you tell him?17
A "No."18
Q That would be the end of the conversation?19
A Yeah, just about.20
Q And then there were several more of these kinds of
21 phone calls?22
A Right.23
Q "Do you have anything you can give me?"24
A Right.25
Q You say no, and that is the end of the conversation?

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A "How you doing." He used to say "How you doing on the divorce," you know, because I told him once I get that settled, you know --

Q So he asked you how you are doing on your divorce case?

A Right.

Q And he knew your wife; isn't that true?

A Right.

Q Isn't it true he told you, at least at one period, to stop your gambling--

A Who told me?

Q -- and go back with your wife?

A Who told me?

Q Mr. DiGirolamo.

A No.

Q But, anyway, he asked you how the divorce was?

A No, he asked me when the divorce is over so he can get his money.

Q When did you tell him that would be?

A I just kept on stalling him.

Q You called him for a couple of months?

A Right.

Q And then, in May, what happened?

A May 11th Tok called me, and Carl came up that night.

Q Let me ask you something first: You do recall it is

May 11th all of a sudden?

A I just went over the transcript.

Q In Mr. Coffey's office?

A Yes.

Q So the only reason you remember it is May 11th is because of something that stated --

A You study this just like you studied your paper.

Q You studied this paper that Mr. Coffey showed you; right? And somewhere on the piece of paper it said May 11th?

A No.

Q Was it something you wrote out?

A Something like this you gave me.

(Continued on page 158 without omission)

Carl came up and he said he will see Coffey

first.

And Carl came up and he visited him briefly?

He did?

Carl called him?

Yes,

Right after you and this Carl came up

and he visited Coffey?

Right after you and this Carl came up

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Adam - cross

(Excerpt of cross examination of Harvey Richard

Adam by Mr. Hanken on August 14, 1974 follows:)

4 BY MR. HANKEN:

Q So that's the way you know it's May 11th, because of
something somebody put down on the paper?

A. Right.

8 Q. You have no independent recollection that it was May
9 11th?

10 A. I have an independent recollection, but I'm not too
11 sure on dates, I told you that I have a lot of problems with
12 my eyes, so I don't remember things in the past, I try to go
13 forward.

14 Q So on this date, that you believe is May 11th, Tok called
15 you?

A. Tok called me, Carl came up.

And Carl came up, Tok said he wanted his money?

18 A. Riggs.

8. And Tok came up and he wanted his money?

A. He called.

8. Carl called you?

A. N. S. Tak

8 Tok called you, and then Carl came up?

A. That's what I said.

Q. And did Carl say he wanted money?

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2 A. Yes.

3 Q. And you told Carl no, that you didn't have it?

4 A. Right.

5 Q. And then Carl left?

6 A. Right.

7 Q. And then when did you hear from Tok again?

8 A. He called me during the week, and the 18th he called
9 me and Carl called me, they both came up. I'm sorry -- Carl
10 came up, Tok didn't come up.

11 Q. Did Tok call you on the 18th?

12 A. Yeah.

13 Q. And he said he wanted his money?

14 A. Right.

15 Q. And you said no again, and then Carl came up. Did
16 Carl call you first?

17 A. Pardon me. No, Tok did.

18 Q. Did Carl call you at all that day?

19 A. Yup. He said he's on his way.

20 Q. He said he's coming up, and you told him to come up?

21 A. Right.

22 Q. Didn't you?

23 A. No.

24 Q. You didn't tell him to come up when you spoke to him?

25 A. No.

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1 3

Adam - cross

2 Q Did you tell him not to come up?

3 A You don't tell Carl not to do anything.

4 Q What did you do? You said, "Okay"?

5 A He just came up.

6 Q You said, "Okay", isn't that true?

7 A Right.

8 Q All right. And he did come up?

9 A Right.

10 Q And he asked for money?

11 A Right.

12 Q And you told him: no, you aren't giving it to him?

13 A Right.

14 Q And he left?

15 A Right.

16 Q Now, are these the sum and substance of the conversations

17 that I have related so far?

18 A Right.

19 Q Isn't that your representation of what he said to

20 you and what you said to him?

21 A Right.

22 Q I'm not leaving anything out?

23 A Not yet.

24 Q You aren't leaving anything out?

25 A Right.

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3 hundred percent satisfied as far as that goes.
4

5 Yet, as your Honor indicated, here is a
6 witness who insists on May 25th a tape recording
7 was made. May 25th happens to be one of the
8 dates specified in the indictment. If it was May
9 14th or 28th, perhaps it would not be as
10 detrimental, but that happens to be one of the
11 three dates specified in the indictment.

12 My client is alleged to have committed a
13 crime --

14 THE COURT: I think all this now goes to
15 weight. The witness says it was taped; the
16 Government says it was not. You can argue it as
17 you wish to.

18 MR. HANKEN: Of course, technically, I
19 guess possibly I should move for a mistrial just
20 to protect my client's interests, on the grounds
21 that their witness, their chief witness and their
22 complaining witness, has testified under oath
23 several times, both to myself and to you, that a
24 tape was in fact made and he in fact heard it.

25 MR. COFFEY: I am happy that --

MR. HANKEN: I am faced with that situation.

MR. COFFEY: Is that a motion, Mr. Hanken?

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1
2 Is that a motion?

3 object. MR. HANKEN: Yes.

4 MR. COFFEY: Your Honor, there is a motion
5 on the record for a mistrial. Obviously there is
6 something in the record he claims the Government
7 has suppressed or hidden or may not have turned
8 over, an appropriate tape recording, and I would
9 like to ask this witness a few questions to clear
10 up this matter and then put Mr. McNamara --

11 THE COURT: I was going to ask you to allow
12 this witness some questions on proffer, anyway.

13 MR. COFFEY: Thank you.

14 THE COURT: The purpose of excusing the
15 jury was to try to clear up this matter for the
16 Court; for another forum, also; and I would have
17 permitted you to ask him questions.

18 MR. HANKEN: I have no objection; if he can
19 clear it up--

20 MR. COFFEY: Thank you.

21 MR. HANKEN: --I will be just as happy.

22 MR. COFFEY: Adam, I will ask you to pay
23 close attention to the questions --

24 MR. HANKEN: However, do not lead him.

25 MR. COFFEY: Thank you, Mr. Hanken.

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2 asked me that question -- you can look further on in that
3 script and you will see why I bet with him. I just -- it
4 just slipped my mind for a fast second. But I covered up
5 with him. But I did bet with him. I said it in the script
6 somewhere.

7 Q Your testimony is, then, that you did bet with him--

8 A Yes.

9 Q -- during that time, also; am I right?

10 A Right.

11 Q Just have a few more questions -- in fact, I don't.

12 MR. HANKEN: Thank you very much.

13 THE COURT: Redirect.

14 REDIRECT EXAMINATION

15 BY MR. COFFEY:

16 Q Mr. Adam, are you nervous ~~today on the stand?~~

17 A Yeah.

18 Q Nervous yesterday?

19 A Yeah.

20 Q Prior to the tape recording in which a conversa-
21 tion was recorded on June 1, 1973, did that gentleman, Mr.
22 DiGirolamo, ever threaten you?

23 MR. HANKEN: Your Honor, number one, I will
24 object to the leading nature of the question.

25 Number two, I will object to the conclusion that

is forced out of this witness. That is a jury question. I mean he can say what was said or so forth, but the characterization should not come from this witness.

THE COURT: Yes, sustained.

BY MR. COFFEY:

Q Prior to the tape recording on June 1, 1973, did you have any discussions with Mr. DiGirolamo specifically concerning the money you owed to him?

A Yes, I did.

Q Do you recall how many such discussions you had with him?

A Few.

Q Do you recall any --

MR. HANKEN: Mr. Coffey, I did not hear his answer.

THE WITNESS: A few.

Q Do you recall anything that was said in those few conversations that you had with him?

A He said he was sending Carl up and I better have something or he's going to kick my head in, kick my brains in.

MR. HANKEN: May I know the date of these conversations, your Honor?

MR. COFFEY: May I proceed?

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2 THE COURT: Is there objection?

3 MR. HANKEN: Yes, your Honor.

4 THE COURT: Yes. Let's try to tie this
5 down.

6 MR. COFFEY: Thank you, your Honor.

7 BY MR. COFFEY:

8 Q Do you recall, using the recorded conversation of
9 June 1st as a focal point, how much time prior to June 1st
10 Mr. DiGirolamo made this remark to you?

11 A Couple of days.

12 Q Do you recall how many occasions, if more than
13 one -- and, if so, try and indicate -- this type of remark
14 about beating your brains in was said to you by Mr. DiGirolamo?

15 A About a week before that same thing.

16 Q Is that two occasions?

17 A Yeah. He told me he was going to have my legs
18 busted or something, legs busted or arms busted.19 Q Do you recall, to the best you can recall, the
20 specific language he used?21 A He swore a lot, "f" this, "f" this. It was
22 really -- I got scared.23 Q My question, Mr. Adam, is can you tell the jury
24 as best you can recall exactly what it was, if anything, Mr.
25 DiGirolamo said was going to happen to you --

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2 MR. HANKEN: Your Honor, I am going to
3 object to this and ask that this witness be
4 warned about perjury. I hate to say this in
5 front of this jury. I asked him yesterday to
6 tell me each and every conversation he had with
7 Mr. DiGirolamo --

8 MR. COFFEY: I take strong issue to that
9 remark.

10 THE COURT: Yes. I am sure the jury can
11 recollect questions and answers. If that is a
12 motion of some type, it is denied.

13 MR. HANKEN: I move that his answers be
14 stricken based on his testimony yesterday when I
15 asked him to give the sum and substance of
16 every conversation he had with Mr. DiGirolamo.
17 I must have not been in the courtroom, because I
18 do not remember one word that he said yesterday
19 that is similar to what he is saying today.

20 THE COURT: I will have to leave all that
21 to the jury. Motion is denied.

22 MR. HANKEN: Thank you.

23 THE COURT: It is a matter of credibility.

24 BY MR. COFFEY:

25 Q Mr. Adam, I believe the question was do you recall
001

2 what specific language, if anything, Mr. DiGirolamo used to
3 indicate to you what would happen to you--

4 A Yes.

5 Q -- prior to June 1, 1973 if you did not pay.

6 A The other thing --

7 MR. HANKEN: I will have to object, your
8 Honor. I have to ask for a date. I have to ask
9 him to pin down dates.

10 THE COURT: Yes. Are we talking about a
11 few days before June 1st or the week before that
12 or some other date? I think we ought to know
13 what we are talking about with respect to time.

14 BY MR. COFFEY:

15 Q Can we start, Mr. Adam, bearing that question in
16 mind, with the telephone conversation with Mr. DiGirolamo a
17 few days before June 1st?

18 A Yes. Want me to tell it?

19 Q Yes. What did Mr. DiGirolamo say?

20 A Well, he says if I didn't have something for Carl
21 that Friday, I'm going to get my brains kicked in. That's
22 about it. He hung up.

23 Q Is there any doubt in your mind whatsoever that
24 that was said to you by Mr. DiGirolamo?

25 A Positive.

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3 MR. HANKEN: Your Honor, my other objection
4 is also this: that Mr. DiGirolamo is not charged
5 with making threats, and I think if these threats
6 were, in fact, made he should have been charged
7 with it. He is not.

8 MR. COFFEY: I think that the indictment
9 adequately covers this period and this type of
activity, your Honor.

10 MR. HANKEN: It does not cover threats by
11 Mr. DiGirolamo. He is not charged with making
12 threats.

13 THE COURT: Objection is overruled.

14 BY MR. COFFEY:

15 Q Mr. Adam, prior to the conversation you just
16 indicated, was there any other conversation along the same
17 lines between you and Mr. DiCirclamo, prior to that time?

18 A About a week before that -- I'm not sure of the
19 exact date, but it was about a week, seven days to five days --
20 he called me up again. He says, "You are going to get your
21 arms broke." He says, "You gotta pay; you got to pay this
22 tab." That's what he said.

23 Q On June 1st, the day of the recording, did you
24 talk to Mr. DiGirolamo on that day?

25 A Yes.

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Q Did he threaten you that day?3
A Yes, he had.4
5
MR. HANKEN: I will object, your Honor, to
his phrasing of the question.6
7
MR. COFFEY: I will withdraw that
phraseology.8
BY MR. COFFEY:9
10 Q Can you tell us what you recall he said to you on
the telephone on June 1, 1973?11 A It was always something pertaining to bust your
12 legs, punch you in the mouth.13
14 MR. HANKEN: I object, your Honor, to what
it always was. I would like to hear that
15 conversation.

16 THE COURT: Sustained.

17 Q Mr. Adam, you have to testify, as best you can
18 recall, what was said to you, and not a summary or
19 characterization of what was said to you.

20 A Okay.

21 Q Do you recall what was said to you by Mr.
22 DiGirolamo on the 1st of June?

23 A He said I was going to have my legs broken.

24 But I want to say before I go any further --

25 Q Well --

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1 A Okay, go ahead.

2 Q Is there something else that he said to you on that
3 day?

4 A No.

5 Q Is there something you said to him in that tele-
6 phone call?

7 A No.

8 Q Did you make any response to that remark?

9 A No.

10 Q Did you ever indicate to Mr. McNamara that these
11 remarks had been said to you by Mr. DiGirolamo?

12 A Yes, I did.

13 Q How soon after these remarks were made did you
14 indicate to Mr. McNamara that they had been made?

15 MR. HANKEN: Object, your Honor, unless I
16 know which remarks are we talking about, the June
17 1st remarks --

18 MR. COFFEY: Any of these remarks.

19 A I didn't hear the question.

20 MR. HANKEN: Including June 1st?

21 THE COURT: Just a minute. Let's get the
22 question and the time period. Why don't you
23 rephrase the question.

24 MR. COFFEY: Thank you.

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2 BY MR. COFFEY:

3 Q Directing your attention to the conversation you
4 had with Mr. DiGirolamo on that Friday, a week prior to the
5 conversation you had with Mr. DiGirolamo right before June
6 1st, did you indicate to Mr. McNamara you had such a
7 conversation?

8 A Yes

9 Q When you had a conversation with Mr. DiGirolamo
10 several days immediately before June 1st, did you indicate
11 that to Mr. McNamara?

12 A Yes

13 Q You testified, sir, that you stole from your
14 father?

15 A Yeah

8. What was it you stole from your father?

13 | A Money

18 Q Money?

18 A Food.

20 | Page

A Steaks. I gave Tok a steak one time.

Q Whose idea was that?

22 A. Hub? His

8 Whose idea was it to steal from your father?

H1s

096

2 Q Did you, in fact, steal steak and meat from your
3 father and give it to Mr. DiGirolamo?

4 A Yes, I did.

5 Q Did you owe any money to Carl Alterio?

6 A No.

7 Q When Carl Alterio came into your shop to collect
8 money from you on June 1st, whose money was it that was owed?

9 A Tok's.

10 Q And to whom was it owed?

11 A It was owed to Tok, Mr. DiGirolamo.

12 Q Was it owed to Mr. Alterio?

13 A No.

14 MR. COFFEY: Thank you, Mr. Adam.

15 THE COURT: Recross.

16 RECROSS-EXAMINATION

17 BY MR. HANKEN:

18 Q Mr. Adam, we might have to go through all this
19 again --

20 MR. COFFEY: I missed that.

21 MR. HANKEN: I said we might have to go
22 through this all again.

23 MR. COFFEY: I must object, your Honor, to
24 these remarks.

25 THE COURT: Yes.

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NEW HAVEN, C

2 FURTHER REDIRECT EXAMINATION

3 BY MR. COFFEY:

4 Q Mr. Adam, do you have trouble reading?

5 A Yeah.

6 MR. HANKEN: Your Honor, I do not want to
7 let that go without an explanation from Mr. Coffey
8 as to why we do not have glasses here, or another
9 pair of glasses, or whatever.10 MR. COFFEY: May I continue, please, your
11 Honor?12 THE COURT: The question is do you have
13 trouble reading. He said yes.14 Q Mr. Adam, I show you a document which was
15 prepared by Mr. McNamara, dated June 1st, and ask you if you
16 read that document when it was shown to you by Mr. Hanken.

17 A No.

18 Q Mr. Hanken did not show you that document?

19 A I don't think so, no.

20 MR. HANKEN: Which document didn't I show
21 him? Wait a minute. Which document didn't I
22 show him.23 Are you showing him I did not show him this
24 page, or is he saying, or who is saying?

25 MR. COFFEY: Your Honor, I do not wish to

2 engage in colloquy with Mr. Hanken.

3 THE COURT: I do not think there should be
4 colloquy between the two lawyers, and I will
5 leave it to the jury's recollection, but the
6 June 1st interview was shown to this witness --

7 MR. HANKEN: Yes, your Honor, that is what
8 I thought.

9 THE COURT: -- in my presence.

10 MR. HANKEN: I will object.

11 BY MR. COFFEY:

12 Q Mr. Adam, do you recall Mr. Hanken asking you,
13 after you read the June 1st statement, if that report
14 indicated you had relayed any threats from Mr. DiGirolamo?
15 Do you recall being asked that?

16 A Yes.

17 Q Do you recall --

18 MR. HANKEN: I will object, your Honor.

19 That was not the question and that was not the
20 testimony. That is a misstatement of the
21 testimony.

22 THE COURT: Yes. Ask your own question.

23 I do not think he said, if my recollection is
24 correct -- if it is terribly important, we can
25 get the court reporter to dig it out, but I do not

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think he said "did he threaten you."

MR. HANKEN: I think I was relatively specific, your Honor.

THE COURT: Yes.

MR. HANKEN: What threats I was talking about.

MR. COFFEY: Yes.

BY MR. COFFEY: Thank you, your Honor.

Q Do you recall what Mr. DiGirolamo said to you when he called you up on the phone on June 1st?

A Told me I better give Carl something or he can't control him, that he was --

Q Mr. Adam, I will ask you to speak slowly and loudly and clearly, what it was that was said by Mr. Alterio to you on the phone on June 1st.

A By Mr. Alterio?

Q By Mr. DiGirolamo -- excuse me.

A He said to me "I can't control him any more. If you don't give him something, you are going to get busted up."

Q That contained in the statement of June 1st from Mr. McNamara?

A Let me see it.

No.

Q Can you read that, sir?

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2 A I get mixed up. My eyes. These things so blurry.

3 MR. COFFEY: I will offer that document,
4 your Honor.

5 MR. HANKEN: What is the purpose of the
6 offer? I asked him if he testified --

7 THE COURT: Yes. The objection is
8 sustained.

9 MR. HANKEN: Thank you, your Honor.

10 BY MR. COFFEY:

11 Q Would it be possible for you --

12 THE COURT: The only thing that I might do
13 here is -- it is luncheon time -- the record should
14 note that it is a paragraph the witness was asked
15 to read concerning something with respect to the
16 defendant. But I will still call a recess now.
17 Maybe during the recess -- he has glasses -- he
18 can read what you want him to read, but I do not
19 see that that requires that the document be
20 introduced into evidence.

21 MR. COFFEY: I just point out to the Court,
22 if Mr. Adam cannot recall, we would offer his past
23 recollection recorded, your Honor, if he adopts
24 the statement as his.

25 THE COURT: You'd better get me some law on

2 that.

3 MR. HANKEN: I would like to see that, too.

4 THE COURT: I will excuse the jury until
5 two-fifteen, but I will excuse counsel until two
6 o'clock, at which time I will hear arguments on
7 the admissibility of this document.

8 (Luncheon recess at one o'clock p.m.)

9

10 The question now is what time shall we resume?

11 000

12 That is all right and we will resume at 1:00 P.M.
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18 The Court will adjourn for luncheon.

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21 The Court will resume.

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AFTERNOON SESSION

2:20 P.M.

THE COURT: Just prior to the recess there
was an offer.

MR. COFFEY: Your Honor, I think what I
stated was I may offer what I thought was past
recollection recorded. I still think that might
be a viable theory, but that was only under
circumstances where Mr. Adam could not recall
what he said at all on that date. But, as I
understand, that is not the situation.

I think we can go right forward with the
jury.

THE COURT: Very well, the offer is with-
drawn.

Bring in the jury.

MR. COFFEY: Still anticipating concluding
today, your Honor.

(Jury present)

THE COURT: Good afternoon.
Just prior to the noon recess, Ladies and
Gentlemen, you may recall that the Government
offered a certain document. There was an
objection to the offer. In your absence, the

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Government has withdrawn the offer.

MR. HANKEN: Now we come to the witness HARVEY RICHARD ADAM, witness for the Government, resumed and testified further as follows:

FURTHER REDIRECT EXAMINATION (CONT'D)

BY MR. COFFEY: Coffey: Your Honor, I would suggest at this point

Q Mr. Adam, do you recall what you told Mr. McNamara that Mr. DiGirolamo, the defendant, said to you on the phone on June 1, 1973?

A He said to me, "You know I can't control Carl anymore. He's coming up Monday. You better have something for him."

Q Did you have any other conversation with Mr. DiGirolamo on the telephone after June 1st?

A A few weeks later.

Q Did you tell Mr. McNamara what was said to you by Mr. DiGirolamo on that occasion?

A Yes.

MR. HANKEN: What date are we talking about now? Excuse me.

Q What is your best recollection as to --

A He says --

THE COURT: No, what date.

Q What date?

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A July 6th.

MR. HANKEN: Aren't we outside the date of
the indictment?

THE COURT: Yes. What is the purpose of

MR. COFFEY: Consciousness of guilt, your Honor, and continuing pattern. This would be a statement, an admission by this defendant.

THE COURT: Just a minute. Let's not get
into what it is.

I am sorry, Ladies and Gentlemen, I am going to have to excuse you again so I can hear argument.

(Jury not present)

THE COURT: For the record, let's first find out what the conversation is.

MR. COFFEY: May I say one thing? I won't be saying what it was that Mr. Adam will testify to. This is already in evidence, your Honor.

Mr. Adam on direct examination yesterday morning did testify as to what was said.

THE COURT: If it is already in evidence, then it can be objected to as repetitious. I do not recall anything about July 6th.

2 MR. HANKEN: I may have been confused, your
3 Honor, as to dates, but I do not recall July 6th,
4 myself, that specific date.

5 A (Continuing) That's when Tok called me up and
6 said I had to give him something, anything, to pay him, "some
7 meat from your father," stuff like that, I think, if I'm not
8 wrong.

9 MR. HANKEN: I thought that meat from the
10 father business occurred prior to June 1st.

11 THE COURT: Is that the extent of the
12 conversation?

13 THE WITNESS: I think so. I'm not sure,
14 I'll tell you the truth.

15 MR. HANKEN: Excuse me, Mr. Coffey. See,
16 I do not think this is fair. We are outside the
17 presence of the jury. The man says he does not
18 remember and does not recall a conversation.

19 Now Mr. Coffey wants to refresh his
20 recollection, so when the jury comes back he will
21 know what he is talking about. I think the jury
22 should see this exhibition if it is going to be let
23 in.

24 THE COURT: I do not recall the date July
25 6th, but I do not claim an infallible memory. On

2 the other hand, I heard of this meat from his
3 father on three or four occasions. If that is the
4 extent of his conversation, I am going to sustain
5 the objection on several grounds: One, it is
6 repetitious; and, two, it is certainly outside the
7 scope of the time of the indictment; and it
8 certainly does not show consciousness of guilt.

9 MR. HANKEN: Just one other point, your
10 Honor: It is outside the scope of my recross,
11 I guess, because I just limited myself from June
12 1st backwards.

13 THE COURT: Right.

14 So for all those reasons the objection is
15 sustained.

16 Bring in the jury.

17 (Jury present)

18 THE COURT: You may be seated, Ladies and
19 Gentlemen.

20 Ladies and Gentlemen, in your absence I
21 sustained the objection.

22 MR. COFFEY: Thank you, your Honor.

23 BY MR. COFFEY:

24 Q Mr. Adam, one last question:

25 As a result of the conversations you had with Mr.

2 DiGirolamo and Mr. Alterio as they related specifically to
3 your debt that you testified to, in the amount of \$10,000,
4 would you tell the ladies and gentlemen of the jury what your
5 state of mind was as of June 1, 1973?

6 MR. HANKEN: Your Honor, I will object to
7 that question, because he has testified on a number
8 of occasions as to his reactions, how he felt, what
9 he believed.

10 THE COURT: This is the last question of the
11 day with this witness. I will allow it.

12 A I was just a degenerate gambler. I had to make
13 a bet or I didn't sleep that night. That's how it all
14 started.

15 MR. COFFEY: Thank you.

16 THE COURT: Anything further?

17 MR. HANKEN: No, your Honor. Thank you.

18 THE COURT: Just a minute. Just see if you
19 can help me out with a part of this conversation
20 that you had with Carl Alterio on June 1st.

21 There is a part of the conversation where Carl
22 said "Well 'f' him too," meaning --

23 THE WITNESS: Tok.

24 THE COURT: -- Tok. You remember that?

25 THE WITNESS: Yeah.

THE COURT: And you said, "Well, tell him."

Then Carl said, "Okay Harvey, that's the only f-ing reason why I'm paid. If it wasn't for that you wouldn't f-ing get away with it.

"Harvey: Well, that's why I told Tok not to send you up here."

What were you and Carl talking about when Carl said "that's the only f-ing reason why I'm paid"?

THE WITNESS: He gets paid to come up -- to collect debts.

THE COURT: But if it was not for that, "you wouldn't f-ing get away with it" -- if it was not for what?

THE WITNESS: I don't know.

THE COURT: You do not know what is in Carl's mind, but then you said, "Well, that's why I told Tok not to send you up here." What were you talking about?

THE WITNESS: I was talking about he didn't get the money, he was going to come back again, but I didn't know how he was going to tell Tok, so I says "you could tell him I said."

THE COURT: Thank you.

JAMES L. HANDLEY, JR., called as
a witness by the Government, having been first duly sworn
by the Clerk of the Court, was examined and testified as
follows:

THE CLERK: Please be seated, thank you.

What is your name, sir?

THE WITNESS: Handley, H-a-n-d-l-e-y, first
name James, L., Junior.

THE CLERK: And your address, please?

THE WITNESS: Care of the FBI in New Haven.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. COFFEY:

Q Sir, would you please tell us how you are employed?

A I'm a special agent of the FBI.

Q To which office are you currently assigned?

A New Haven.

Q To which office were you assigned, if any, June 1,
1973?

A New Haven.

Q Were you on duty that day?

A Yes, I was.

Q Directing your attention to the evening hours, can
you tell us if you were on duty at that time?

1 A Yes, I was.

2
3 Q Do you know an individual by the name of Harvey
4 Adam?

5 A Yes, I do.

6 Q Have occasion to see Mr. Adam on 1st of June 1973?

7 A Yes, I did.

8 Q Where did you see him?

9 A I saw him at the ice cream parlor called the Sugar
10 Cone, I believe, in -- in Monroe, Connecticut.

11 Q What time did you arrive at the Sugar Cone on the
12 1st of June?

13 A I would say I arrived there approximately seven-
14 thirty p.m.

15 Q Were you alone?

16 A No. I was in the company of three other agents.

17 Q Would you identify them, please?

18 A Agent McNamara, Agent Raymond Looney and Agent
19 Robert O'Neill.

20 Q Did you all go in the same car?

21 A No, no, we didn't. As a matter of fact, we met
22 at Bridgeport, and then I went out with Bob O'Neill, and Agent
23 McNamara and Agent Looney I believe went together.

24 Q When you arrived -- by that I mean your vehicle --
25 at the Sugar Cone, what did you proceed to do?

2 A Initially we went inside and I met Mr. Adams.
3 I'd never met him before. And we discussed what we would do
4 that evening.

5 Q Who was in charge of the group, the FBI group?

6 A Mr. McNamara.

7 Q As a result of that discussions, did you have
8 an assignment, a specific assignment?

9 A Yes, I did.

10 Q What was that assignment?

11 A I was to wait outside with Agent O'Neill, and we
12 would be notified by Mr. McNamara when an individual would
13 arrive there that Mr. Adams was expecting that evening, and
14 then we would go into the parking area at the Sugar Cone.

15 Q Having received your assignment -- was this a co-
16 assignment with Agent O'Neill?

17 A Yes, I was with Agent O'Neill.

18 Q Please tell us what you did to carry out that
19 assignment, where you went, where you were sitting.

20 A Well, we waited -- I should say I'm not that
21 familiar with the Monroe area, but we waited in the area of
22 the Sugar Cone off to the -- off on a side road, and we waited.

23 Q Do you know an individual by the name of Carl
24 Alterior?

25 A Yes, I do.

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2 Q You have occasion to see him on the 1st of June,
3 1973?

4 A Yes, I did.

5 Q All right. When did you first see Mr. Alterio?

6 A I would say approximately ten or ten-fifteen p.m.
7 I saw Mr. Alterio on the -- I guess you could call it a back
8 porch of the Sugar Cone restaurant.

9 Q Was he alone?

10 A No, he was not.

11 Q With whom was he standing?

12 A He was with Mr. Harvey Adams.

13 Q At this time where were you? How far away were
14 you?

15 A Oh, I would say approximately 35 feet.

16 Q Could you see? Could you see clearly Mr. Adam and
17 Mr. Alterio?

18 A Very clearly.

19 Q I show you Government Exhibits 5 and 6 and ask you
20 if you can point out on either one of those photographs where
21 Mr. Adam and Mr. Alterio were standing on the evening of June
22 1st.

23 A Yes, I can.

24 Q Would you point it out to the jury first?

25 A The first time I observed them, they were standing,

2 right outside the back door here at approximately this
3 position here, and they were right together on the back porch.

4 Q How long did you observe these two individuals
5 together on the back porch?

6 A I would say approximately ten minutes.

7 Q Could you hear what was being said?

8 A No.

9 Q Could you observe what actions or motions each
10 individual was making, if any?

11 A Yes.

12 Q Do you recall today if Mr. Alterio made any motions
13 or actions?

14 A Yes, he did.

15 Q Would you describe how close he was to Mr. Adam at
16 the time they were speaking, when you observed these actions?

17 A Well, he was, I would say, extremely close to Mr.
18 Adams. It seemed to me that he was closer than one would be
19 in a normal conversation.

20 Q Would you step down off the witness stand, please?
21 All right.

22 If I were Mr. Adam, how close would Mr. Alterio be
23 to me?

24 A Well, during the conversation Mr. Alterio was right
25 up into Mr. Adams' body on several of the occasions. He moved

2 away, then he came back, and he was almost touching Mr. Adams.

3 Q At the time you observed him in this close
4 proximity, would you please demonstrate what actions you saw
5 Mr. Alterio take?

6 A Mr. Alterio shook his finger at Mr. Adams on
7 several occasions, and he -- as if giving him instructions of
8 some type.

9 MR. HANKEN: I object.

10 THE COURT: Yes. Sustained. The jury is
11 instructed to ignore it and wipe clean from their
12 minds that characterization.

13 BY MR. COFFEY:

14 Q Just describe what physical actions you observed.

15 A He shook his finger at Mr. Adams in this way, and
16 then he was pounding his fist into his hand in this way.

17 Q Would you please resume your seat.

18 How long did this go on, this conversation that you
19 observed?

20 A I would say eight to ten minutes the conversation
21 went on.

22 Q Where did you observe each of the individuals go,
23 if anywhere, after it broke up?

24 A At the end of the conversation Mr. Alterio left
25 the back porch, got into an automobile and left the parking

2 lot, and Mr. Adams returned. He went back inside.

3 Q How was Mr. Alterio dressed that evening?

4 A As I recall, he was dressed in a pair of slacks
5 and a light-colored golf shirt.

6 Q Would you describe his build, please, as you
7 observed it on June 1st?

8 A Well, he was approximately five foot ten and thin,
9 with a -- I would say a very muscular upper torso.

10 MR. COFFEY: Thank you.

11 THE COURT: Cross-examination.

12 MR. HANKEN: Yes, your Honor.

13 CROSS-EXAMINATION

14 BY MR. HANKEN:

15 Q Agent Handlon is it?

16 A Handley, H-a-n-d-k-e-y, sir.

17 Q Right.

18 When you were there you had your weapons ready?

19 A Well, I had my weapon with me, yes, sir.

20 Q And the other agents had weapons also?

21 A Yes, sir.

22 Q And Mr. Adam knew about that?

23 A Yes, sir.

24 Q You were ready for action if need be?

25 A Yes, sir.

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(Witness excused)

LUCIEN ZEFIRRO, called as a witness by the Government, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Please be seated.

What is your full name, sir?

THE WITNESS: Lucien Zefirro, Z-e-f-i-r-r-o.

THE CLERK: And your address, please?

THE WITNESS: 92 Edgewood Street, Stratford, Connecticut.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR COFFEY:

Q Sir, would you please again repeat in a louder voice your name?

A Lucien Zefirro.

Q How are you employed?

A Right now I'm a school teacher.

Q How long have you been a school teacher?

A This past year I taught in Bridgeport, Connecticut.

Q Do you know an individual by the name of Harvey Adam?

A Yes, I do.

1 Q How long have you known Mr. Adam?

2 A About ten years.

3 Q Do you know an individual by the name of Guy
4 DiGirolamo?

5 A Yes.

6 Q Do you see Mr. DiGirolamo in the courtroom today?

7 A Yes.

8 Q Would you point him out, please?

9 A He's sitting right over there.

10 Q Would you describe which gentleman he is?

11 A The fellow with glasses.

12 Q How long have you known Mr. DiGirolamo?

13 A Approximately two and a half years.

14 Q Do you know him by any other name than Guy?

15 A Yes, Tok. I know him by the nickname Tok.

16 Q Have you ever had any business relationship or
17 employment which was connected with Mr. Adam?

18 A Yes. I worked at his ice cream parlor in Monroe,
19 and before that for about eight years I worked for his father
20 in Bridgeport at his store.

21 Q Where does his father have his store?

22 A At the corner of Park Avenue and Gregory Street
23 in Bridgeport.

24 Q What type of store is it?

1 A It's a grocery store.

2 Q What does it sell in the way of perishable food?

3 A Oh, everything. It's like a -- it's a smaller-
4 scale A&P, you might say. There's not too many of them left
5 around.

6 Q Does it sell meat?

7 A Yes.

8 Q How long did you work at the Sugar Cone restaurant?

9 A From about late 1971 until about June '73.

10 Q Directing your attention to the period January 1973
11 until June of 1973, how often were you working at the Sugar Cone
12 restaurant?

13 A Every day.

14 Q What were your normal hours?

15 A I probably be there from -- we opened at eleven,
16 till we closed at night, ten, ten or eleven o'clock, depending
17 whether it was a weekend or regular day.

18 Q During that period of time that you worked at the
19 Sugar Cone, did you have occasion ever to see Mr. Guy DiGirolamo?

20 A Yes.

21 Q The defendant?

22 A He came up there.

23 Q You recall how many occasions?

24 A Well, during that period of time he came up there

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205 CHURCH STREET
NEW HAVEN, CONNECTICUT

approximately ten times.

Q Do you know an individual by the name of Carl Alterio?

A Yes.

Q Did you ever observe him during the period January to June 1973 come into the Sugar Cone restaurant?

A Yes.

Q How many times?

A I'd say seven or eight.

Q Do you recall today if you had any conversations with Mr. DiGirolamo concerning Mr. Adam during the period January through June of 1973?

A The one that I --

Q First, is the answer yes?

A Yes.

Q Do you recall the specific dates of any of these conversations?

A No.

Q Do you recall the subject matter of any of these conversations?

A Yes, one concerned --

Q What was the subject matter?

MR. HANKEN: May we have at least some inkling as to the date?

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2 THE COURT: Yes.

3 BY MR. COFFEY:

4 Q Do you recall when it would have been?

5 A It was probably March or April 1973. The only
6 way I think you might be able to check it is I know Mr.
7 DiGirolamo was with -- working with the Tuccinardi Construction
8 Company. He had Mr. Tuccinardi come up there with him, and
9 they were working on Churchill Road in Trumbull. I think it
10 was during that period of time when he came up there.11 Q Do you know an individual by the name of James
12 McNamara?

13 A Yes.

14 Q Do you see him in court today?

15 A Yes. He's sitting right there, with the red tie and
16 blue coat.17 Q Did you ever have occasion to see him in the Sugar
18 Cone restaurant?

19 A Yes.

20 Q Do you recall the first time you saw him?

21 A It was around May '73.

22 Q Using that as a fixed point, do you recall any
23 conversations you had with Mr. DiGirolamo either before or
24 after having first seen Mr. McNamara?

25 A Before that.

2 Q Approximately how much before that?

3 A I'd say about a month, six weeks.

4 Q Do you recall the subject matter of any of these --
5 first let me ask you: Do you recall the subject matter of
6 any of these conversations?

7 A Yes.

8 Q How many of these conversations?

9 A Just one in particular.

10 Q Approximately what time did that one conversation
11 take place, using again Mr. McNamara's presence as a fixpoint?

12 A Again I'd say it was about a month, six weeks,
13 before he came up there to bug the place.

14 Q What was the subject matter of that conversation?

15 A Well, it concerned Mr. Adams' gambling, because he
16 talked --

17 Q What did Mr. DiGirolamo say to you, if anything,
18 and what did you say to Mr. DiGirolamo?

19 A Well, Tok come up there and he said that Harvey
20 still owed him this money, which was approximately \$10,000.
21 He said he had to have the money. The reason he was talking
22 to me, Harvey wasn't there.

23 MR. HANKEN: I will object to the reason.

24 Q Did he ask for Harvey?

25 A Yes.

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Q What did you respond?

A I said he wasn't there.

Q Then what did he say?

A Then he started to talking to me.

Q Tell us as, it is important to say, accurately what you do remember as specifically you can what Mr. DiGirolamo said.

A Specifically, I really remember is he said he had to have this money, this amount, which I -- best I remember was about \$10,000. He said -- he said he had to have it.

And I said I don't think Harvey has that kind of money. He says he had to have it, and he banged his fists on the table.

Q Would you please explain to the ladies and gentlemen of the jury exactly how he pounded his fist on the table?

A He said "I have to have the money" like that, and he really pounded the table; and precisely that moment Harvey, Mr. Adams, walked through the door, and I just left, and I guess they continued the conversation.

Q Have you ever talked on the phone during the period January through June of 1973 with Mr. DiGirolamo?

A No, I don't think so.

Q Have you ever talked with him on the phone prior to that time?

A Yes.

Q How much prior would you estimate it was before
January 1973?

A It was probably November-December '72.

Q Were any of these calls on behalf of Mr. Adam?

A I don't understand that. What was that again?

Q Were any of the telephone calls you had between you and Mr. DiGirolamo on behalf of Mr. Adam?

A Yes.

Q Did you perform any services for Mr. Adam?

A . A few times I gave him his bets for the day or night, whatever it was, for the sporting events he was betting on.

Q To whom?

A To Mr. Digirolamo.

MR. COFFEY: Thank you very much, sir.

THE COURT: What period of time was this that Mr. Adam was placing bets with Mr. DiGiralamo; do you remember?

THE WITNESS: It was late 1972, and it might have been -- I don't recall. It could have stretched into the early part of 1973, to the best of my knowledge. I know definitely 1972, November, December.

1
2 BY MR. COFFEY:

3 Q Of seventy what?

4 A Two.

5 Q Did you ever have occasion to meet with Mr.
6 DiGirolamo at Mr. Adam's father's place?

7 A Yes. He came there once in particular.

8 Q Did you ever give him anything?

9 A Yes, I gave him a box of steaks.

10 Q How many steaks?

11 A Approximately forty shell steaks, Delmonico steaks.

12 Q Did he pay for them?

13 A He didn't pay me.

14 Q Were you selling at that time?

15 A Yes, but to the best of my knowledge I recall his
16 father told me he was coming down to pick 'em up.

17 Q Whose father?

18 A Harvey's father, because I -- I worked there on
19 Sunday mornings when I wasn't at the ice cream place.

20 MR. COFFEY: Thank you.

21 CROSS-EXAMINATION

22 BY MR. HANKEN:

23 Q I believe you just said that Harvey's father was
24 at the grocery store at that time and told you that?

25 A No, he was there before. See, I took over when

2 A I didn't overhear that conversation.

3 Q Is this the only time you discussed anything
4 about this case, \$10,000, was with Mr. DiGirolamo on this one
5 day?

6 A That's all I recall, me and him, conversing.

7 MR. HANKEN: Thank you, sir.

8 THE COURT: You are excused.

9 (Witness excused)

10 MR. COFFEY: Government respectfully rests,
11 your Honor.

12 THE COURT: What the Government is telling
13 the ladies and gentlemen of the jury is that it has
14 concluded its case and has no further testimonial
15 evidence. It is appropriate at this time for me
16 to discuss certain things with counsel, so I will
17 excuse the jury.

18 (Jury not present)

19 MR. HANKEN: Your Honor, at this time I
20 would like to move for an acquittal.

21 With respect to the charges against Mr.
22 DiGirolamo, it seems to me that there has been no
23 proof whatsoever Mr. DiGirolamo either aided,
24 abetted, counseled or commanded Mr. Alterio on the
25 dates specified in the indictment to extort money

from Mr. Adam; and, with regard to the conspiracy count, I do not even see one scintilla of evidence that Mr. DiGirolamo conspired with Mr. Alterio to extort money from Mr. Adam. To collect money -- there has been testimony as to that. But to extort it by use of force and violence -- I do not see one particle of evidence. I think all the evidence in the case shows exactly the opposite.

Mr. Adam's testimony is so contradictory it is hard to get a clear pattern of what he did say, but I think on a number of occasions it was testified to that no telephone call -- at least when he testified under cross-examination -- in no telephone call did Mr. DiGirolamo threaten him, and in no telephone call did he indicate that Alterio was being sent there to threaten him.

Your Honor will recall I asked him that about each and every conversation, and he said that that was the sum and substance of it; and in none of those conversations, at least the way he testified to me, was there any allegation that a threat was either made by DiGirolamo or that DiGirolamo told Carl to threaten him.

As far as Alterio's conversations with Mr.

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2 Adam goes, he likewise testified to me that he does
3 not recall that DiGirolamo ever told Alterio to
4 come up there and threaten him. It was just to
5 collect fifty dollars, apparently; at least that
6 is what the tape reveals, to collect fifty dollars.
7 And even the tape, itself, your Honor -- whether
8 or not Alterio's words to Adam could be construed
9 as a threat, I am not even too sure of that. It
10 might be a close case.

11 In any event, he has pleaded guilty. But
12 there is room for doubt there also, because
13 certainly at the very end, whether Mr. Adam has
14 doubletalked his way out of it or whatever, it is
15 clear that Alterio was not only not going to touch
16 him but was not even threatening him any longer;
17 and at that time Adam had even gotten Alterio mad
18 at Tok, who was supposedly behind this massive
19 conspiracy.

20 So that I do not see how evidence has been
21 introduced by the Government, your Honor, at this
22 point, to justify any reasonable demand, findings,
23 there is sufficient evidence to finding him guilty
24 on any of the counts.

25 THE COURT: Mr. Coffey.

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MR. COFFEY: The Government has not alleged a massive conspiracy. It has alleged and proved a very dirty business in a tape recording in which Mr. Alterio tells Mr. Adam "You are going to get your brains bashed in and you are going to go to the hospital."

At one point he said in the transcript "You owed ten thousand f-ing dollars," which is directly the amount that Mr. Adam testified he owed Mr. Alterio. Mr. Alterio says he works for Tok, and on one occasion he said he he sent him up here to collect it "and I've got to have it," or words to that effect.

THE COURT: Let's say there is nothing else. Would that be within the statute? "I'm here to collect a debt and I've got to have it."

MR. COFFEY: With the threat?

THE COURT: Without the threat, without the bashing of the brains in bit.

MR. COFFEY: Well --

THE COURT: I mean is there anything in the law that prevents or proscribes a person from going to another person and saying "You owe me money," even for an illegal purpose? Anything in the

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2 extortion statute in that?

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4 MR. COFFEY: The statute, section 894,
5 requires the use of extortionate means. That is
6 distinguished from 892, I believe, which says
7 that if a debtor is in such an inherent and
usurious situation and extortion is presumed.

8 We have not alleged that situation, and the
9 Government's claim that extortionate means does have
10 to be shown and that we have shown it -- I am not
11 telling the Court that a simple attempt to collect
12 an extension of credit is in the statutes. It
13 specifically says you have to have something more,
14 extortion.

15 THE COURT: Right.

16 MR. COFFEY: However, I know the Court
17 realizes that extortion takes many, many forms.
18 It can be a nonverbal form; in this case it could
19 be a very explicit threat of whacking brains in or
20 doing to the hospital.

21 THE COURT: Let me ask you this:

22 Do you think the primary purpose of this
23 statute was the type of cases that you have been
24 bringing here?

25 MR. COFFEY: Oh, absolutely.

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2 THE COURT: That you have been bringing here
3 with your Bridgeport cases?

4 MR. COFFEY: Absolutely.

5 THE COURT: You do not think the primary
6 purpose was loan-sharking?

7 MR. COFFEY: Your Honor, I cannot think of
8 an activity which is more invidious and which --

9 THE COURT: I did not ask you that. I
10 said is the primary purpose of the statute loan-
11 sharking.

12 MR. COFFEY: No.

13 THE COURT: All right. What is the
14 primary purpose of the statute?

15 MR. COFFEY: The primary purpose is using
16 extortionate means to collect any debt in which
17 payment is deferred. The Congressional history
18 is very clear that one of those circumstances is
19 illegal gambling which fosters precisely this type
20 of activity, and if, instead of requiring Mr. Adam
21 that he pay 10 percent every week until the debt is
22 paid -- if instead of that, which would be a
23 loan-sharking situation, they simply tell Mr. Adam
24 "You are going to pay the whole amount or you are
25 going to pay \$50 or we are going to take your

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vacuum cleaner or you are going to get beaten up"--
if anything, that is worse than a loan-sharking
situation?

"Loan-sharking" is a generic term which I
think clearly covers this type of situation. The
only difference is the collection of interest.

THE COURT: I am not saying the situation
is not covered by the statute. I am simply asking
you a very simple question:

Your answer is that loan-sharking was not the
primary purpose of the statute; is that correct?

MR. COFFEY: I am saying loan-sharking is
not the only primary --

THE COURT: I did not ask you that. I
asked you a very simple question.

MR. COFFEY: The statute --

THE COURT: Wasn't loan-sharking, where a
loan is granted on the basis of tremendous usurious
rates, the primary purpose of the statute? If it
was not, you can say so. If it was, then you can
tell me that. Or if you do not know --

MR. COFFEY: I think I know. I think I can
give the Court an answer; and the answer is there
is no one primary reason for this statute. It

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3 could be usurious rates; and if Congress was only
4 concerned with usurious rates it would have only
5 passed section 892. But it went on to say the
6 collection of any extension of credit under 894 is
7 so inherently evil that Congress removes the, as
8 you know, interstate aspect of the activity.

9 I am frankly almost astonished, your Honor,
10 that that question could be asked. If Congress
11 meant to get to this type of activity --

12 THE COURT: Just a minute, Mr. Coffey.

13 First of all, I resent the tone and I resent
14 the question. I did not ask you if Congress had
15 this in mind. I said what is the primary purpose
16 of the statute. That is all I asked you. And
17 if it was not loan-sharking, you have a full
18 opportunity to tell me.

19 MR. COFFEY: I apologize if I have used --

20 THE COURT: I feel free to ask you any and
21 all questions concerning this statute, and, if you
22 do not like the questions, the Court asks you may be
23 seated.

24 MR. COFFEY: May I explain myself, your
25 Honor?

THE COURT: I will take a ten-minute recess.

(A twenty-minute recess was taken.)

THE COURT: In view of the time, I think I will excuse the jury until Tuesday.

Bring in the jury.

(Jury present)

THE COURT: Ladies and Gentlemen, I still have matters to take up with counsel, and there is really no sense in your waiting in the jury room. I think I will excuse you now until Tuesday morning at ten-thirty. Please have a good weekend, healthy weekend, and we will see you on Tuesday. Do not do any research; do not talk to anyone about this case; do not read about it; and remember all my admonitions.

(Jury not present)

THE COURT: All right, we will proceed.

MR. COFFEY: Your Honor, I apologize, and what I said should not have been said. I am a little hot-headed, and this type of activity bothers me. I guess it shouldn't; but I see a lot of it. And I have a great respect for the Court -- and I am not flattering the Court; I do. But I just said what I felt, and what I felt was against the activity.

I really think that this is the type of
activity the federal government and Congress should
be prohibiting against. When I said I am
astonished, I should not have said that; but at the
same time I did not mean to infer I am astonished
at this particular Court; although I undoubtedly
gave that impression, I did not mean it. And I
hope the Court will understand.

THE COURT: I am not going to get into a
debate with you about the purpose of the statute
or about this activity. No one has resented this
type of activity nor prosecuted it more vigorously
than I when I was U. S. Attorney. I think the
record will clearly demonstrate that.

On the other hand, there are many cases
which say the primary purpose of the statute is
loan-sharking. It has been referred to as the
anti-loan-sharking act in several instances.

MR. COFFEY: If I may say, your Honor --

THE COURT: Not to say that this activity is
not covered. I am not saying that at all.

But, anyway, that has nothing to do with the
essential elements of the crime charged, so why
don't we proceed to that.

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2 MR. COFFEY: All right.
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4 I think part of what I wanted to say I had
5 already said, and that was that the tape clearly
6 reveals, as well as Harvey Adam's testimony, that
7 a threat was made against him.

8 It can be argued to the jury -- and
9 undoubtedly will be argued to the jury -- that Mr.
10 Adam at one point on his direct examination, the
11 first time around, so to speak, said he was
12 threatened by Mr. Alterio and also threatened by
13 Mr. DiGirolamo, and then on cross-examination he
14 stated that he was threatened, and Mr. Hanken took
15 him through his telephone conversations with Mr.
16 DiGirolamo, and Mr. Adam's recollection was half
17 of what he recalled on direct; that is , he
18 recalled being told to pay, he did not recall being
19 told that he was threatened. And on redirect he
20 again indicated, yes, he had been threatened.

21 I think it should appear quite clear to the
22 Court that Mr. Adam is not the brightest witness in
23 the world, and he may not have understood either
24 all of the prosecution's questions or all of
25 defense's questions; but that is an area
peculiarly, I think, within the realm of the jury,

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2 because at this point the Court must take the
3 evidence in the light most favorable to the
4 Government, and the evidence most favorable to the
5 Government, of course, is Mr. Adam's recollection
6 where he was specifically threatened both by Mr.
7 Alterio and by Mr. DiGirolamo, and that those
8 threats related to the \$10,000 threat.

9
10 In addition, Mr. Adam's testimony is not the
11 only evidence that this Court has to corroborate
12 it, even though Mr. Adam's testimony, solely,
13 standing alone, would be sufficient. The last
14 witness, Mr. Zefirro, testified that during that
15 period of time when Mr. Adam testified he was
16 incurring this debt to Mr. DiGirolamo he was
17 familiar with Mr. DiGirolamo and he was coming into
18 the shop, and that approximately a month before he
19 saw Agent McNamara -- and he believed he saw Mr.
20 McNamara in May, which would be correct -- Mr.
21 DiGirolamo came into the store and certainly did
22 not act like a person who was trying to collect a
23 friendly debt in a perhaps legal or friendly manner.
24 I believe Mr. Zefirro's testimony was he's got to
25 pay, and Mr. DiGirolano pounded the table with his
hands.

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2 If Mr. DiGirolamo was saying that to an
3 innocent bystander, what is he saying to Mr. Adam,
4 himself? And Mr. Adam testified that he was going
5 to be hurt, and Mr. Lester and Agent Handley both
6 testified that with respect to the former, on May
7 25th, with respect to May 25th, and with respect
8 to the latter, on June 1st, that they saw Mr.
9 Alterio under circumstances that clearly indicated,
10 when taken in context with Mr. Adam's testimony,
11 transcript, that an extortionate credit transaction
12 was taking place, or the collection by extortionate
13 means.

14 So, then, the only question I think remaining
15 to the Court is: Is Mr. DiGirolamo tied into
16 that activity; and he is both by Mr. Zefirro and
17 clearly by Mr. Adam, and also by the agency
18 principal, by the remarks of Mr. Alterio.

19 I think there is more than sufficient
20 evidence to prove beyond a reasonable doubt,
21 certainly for the purposes of this motion, that the
22 case should go and will go to the jury.

23 THE COURT: What test does the Court apply
24 at this stage of the trial?

25 MR. COFFEY: As I understand it, at this

point the Court applies the test that the evidence must be viewed in the light most favorable to the Government, so that any inconsistency --

THE COURT: That is the factual aspect. What is the legal test that the Court applies to the facts?

MR. COFFEY: I think it is, is there evidence sufficient, considered in the light most favorable to the jury, that if the jury considered it, it could convict, if the jury believed Harvey Adam, that he was threatened by Mr. DiGirolamo and/or, in addition, threatened by Mr. Alterio with Mr. DiGirolamo's consent, and is there evidence that a debt was outstanding, and, if the Court feels that factually there is evidence, could the jury convict after hearing the instructions on those facts.

We would contend that they can, because, if they find on counts two, three and six that an extension of credit was owed and that Mr. DiGirolamo aided, abetted, induced or somehow caused Mr. Alterio to make these particular collections, then that, in fact, completes the crime.

With respect to count seven, the conspiracy,
I think we have discussed it side bar. The crime
of conspiracy under 894 with the Hobbs Act is
complete on the agreement alone. So, in
instructing the Jury, I think the Court can and
should tell the jury that, if you find from all of
Mr. Alterio's acts and/or the acts of Mr.
DiGirolamo that an agreement was reached between
those two to use extortionate means, then they
need not find on any particular date as alleged
in counts two, three and six, or two, four and
six, that a specific collection of an extortionate
means to collect an extension of credit was used,
that an agreement may be inferred, and very often
is, if not in the majority case, in the
conspiracy case, not by a specific agreement but
by the disconnected acts which, taken together in
the mosaic, indicate an agreement which the jury
can infer.

THE COURT: Do you have that spelled out
in your requests?

MR. COFFEY: I have a basic conspiracy
request spelled out, your Honor.

THE COURT: Yes, I am familiar with that.

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All right, do you have anything else?

MR. HANKEN: I just have one more observation to make, your Honor.

Mr. Coffey keeps referring to the fact that Mr. Alterio went there to collect a debt, and let's even say that was done with the knowledge and approval of Mr. DiGirolamo. He concludes from that that he was aiding and abetting Mr. Alterio in violation of the statute. But I do not view that to be the law.

As your Honor pointed out, there is nothing illegal about collecting a debt, a gambling debt, a loan shark debt or any other debt. The illegality comes in, as far as the federal government is concerned, in using extortion means to collect the debt. He would have to prove that Mr. DiGirolamo instructed, commanded or counseled Carl Alterio to use extortionate means in collecting this \$50; and that is the only proof we have. We are only talking about \$50, at least insofar as the tape recording of June 1st is concerned; or, even if it is \$10,000, it really does not make any difference.

So, if he has not proved that, then it

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2 seems that reasonable minds could not differ in
3 any way as to his innocence, Mr. DiGirolamo's
4 innocence, insofar as the aiding and abetting
5 counts are concerned. Again, it is not aiding
6 and abetting in the collection of the debt; it is
7 aiding and abetting and using extortionate means
8 to collect.

9 One more point that might be observed is
10 that when Mr. Adam testified that he told Mr.
11 McNamara that Tok had said to him he is going to
12 bust his arms or bust his legs or beat his brains
13 in during almost every conversation he said he
14 had with Tok, and I asked him to point out in any
15 note prepared by Mr. McNamara was there one single,
16 solitary reference to the use of physical force
17 so far as busting legs or arms or using the words
18 that he used to Mr. Coffey, he went through every
19 single note that I had with regard to the
20 conversations with Mr. DiGirolamo and admitted
21 that there were no such notes written by Mr.
22 McNamara.

23 Your Honor, the test might still be whether
24 a jury could convict him beyond a reasonable
25 doubt. Whether the evidence is favorable to the

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2 Government viewed in any light I don't care.

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4 Viewed in any light, could any reasonable man say
5 beyond a reasonable doubt that these threatening
6 phone calls were made by Mr. DiGirolamo when the
7 agent in charge of the case, Mr. McNamara, highly
8 respected, extremely competent agent for many,
9 many years, does not put a word into his notes
01 10 about these alleged threats, which is the whole
11 crime? Not going to collect \$50; that is not the
12 crime.

13 So, if these threats were made, I do not see
14 how any reasonable man could say that Mr. McNamara
15 would not have put them into his notes.

16 THE COURT: On the one hand, of course, it
17 is an impossible task, nor does the law require
18 the Government to prove that two men sat down
19 and one of the participants to the conversation
20 said to the other, "Now, I hereby counsel you and
21 command you to collect this debt and use
22 extortionate means to do so." Not only the law
23 does not require it but common sense does not.

24 So the aspects of the Government's case
25 that you attack can certainly be proven by
circumstantial evidence, and, of course, that is

what the Government is relying on, and
inferences may be drawn from the conversations of
the participant, Alterio, with Adam.

The act alleged to be criminal is within the
statute. There is sufficient factual basis in
the record, if you dissect it and bisect it; it is
there, and I think enough to go to the jury.

On the other side of the coin, of course,
is the major issue in this case, as I see it in
this case, the credibility of Adam. There is
little question in my mind that his testimony is
honeycombed with inconsistencies, falsehoods and
perhaps even admissions of perjury. My own notes
are a mish-mash of inconsistencies by this
witness -- and I do not intend to laundry-list
the inconsistencies. I think if anyone reads
the record, his head will be spinning after a
relatively short trial with the type of witness
that was on the stand. I think I make an under-
statement when I say that almost everything he
said on one day he contradicted on the next day,
and, in fact, within a ten- or fifteen-minute span
he said about ten or fifteen different things.

I, too, find it absolutely inconceivable

that he told Agent McNamara facts that he related on the stand and Agent McNamara did not record them.

I certainly got the feeling that he was extremely careless with his testimony and changed it by the minute; however, some of his testimony provides a basis for sustaining a conviction.

Whether the jury will give it credence in the light of the type of witness he was is for the jury and not for this Court. I certainly find it extremely difficult to accept some of the statements made by this witness. I think the cross-examination, however, put it on the scale for the jury to weigh.

Frankly, I sit here and I am not even sure when the debt was made. My notes indicate it was a Super Bowl game in January, and now we are back in November of 1972, when the debt was incurred over a period of weeks.

My notes indicate many, many other areas.
I am particularly distressed when I learned that
he made misstatements in a trial before me in
January and he made misstatements to the grand
jury; and his typical answer seems to be a pat one,

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2 that he was afraid and nervous, or he was looking
3 to the future and not the past. And, of course,
4 in my courtroom I certainly do not think he had
5 anything to fear. The record should note that
6 the defendant in that case was about one-third
7 the size of Mr. Adam, very meek-looking person.
8
9 I do not even think there was any physical
10 confrontation at any time that would warrant fear,
11 at least in my presence. I am certain before the
12 grand jury there was not anyone present that
13 would instill fear in this man.

14 I think if you closely analyze his testimony
15 there is just serious question in my mind whether
16 conviction should be based upon this type of
17 witness the Government has put on.

18 On the other hand, that is not my province;
19 it is the jury's province to determine credibility.

20 I even analyzed the transcript, as I am
21 sure you did. It is almost as if Adam baited
22 Alterio, who certainly is not very bright at all --
23 he appeared before me for a change of plea -- into
24 saying what he did, and turned him right around
25 from a severe beating to an almost handshake, by,
 as the witness himself said, double talking him. 146

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2 So there are a great many things in this
3 case that trouble the Court. But my troubles do
4 not inure to the defendant's benefit because I am
5 not the judge here of credibility. It is the
6 jury that is going to be.

7 So the motion is denied. All your arguments
8 that you have made are ones that you can present to
9 the jury, but I really think they go to credibility
10 more than anything. On the other hand, Mr.
11 Coffey can, as I say, search the law and I am sure
12 find enough to provide a basis upon which he could
13 argue a conviction should be returned on all
14 counts.

15 I would like to know at this point if you
16 are privileged to tell me what your strategy is,
17 particularly since I would like to prepare my
18 charge. On the other hand, you are not obligated
19 to do so, because you may want to think about it.

20 MR. HANKEN: I will be glad to tell your
21 Honor.

22 Previous to today's testimony I was prepared
23 to perhaps put Mr. DiGirolamo on and maybe one or
24 two other brief witnesses. As of this moment
25 there is a great likelihood I may not put anything

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2 on.
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4 But I can safely say this: If we do put
5 some evidence on Tuesday, it will certainly cover
6 no greater length of time than one o'clock.

7 THE COURT: Very well. I appreciate those
8 comments, and I won't press you further, because
9 I think any trial attorney at this point would
10 be weighing trial strategy in view of the
11 appearance Mr. Adam made.

12 But, in any event, would you say that each
13 of you would not need more than an hour for
14 summation?

15 MR. HANKEN: That is plenty, your Honor.

16 MR. COFFEY: That would be about right, your
17 Honor.

18 THE COURT: How about you, Mr. Hanken?

19 MR. HANKEN: That is sufficient.

20 THE COURT: All right. Very well. We
21 will now recess this case until Tuesday, but court
22 is adjourned until tomorrow morning.

23 (Court adjourned)

PROCEEDINGS

THE COURT: The record should note that there has been a delay in commencing the trial this morning. The Court was informed by Mr. Hanken that he intended to rest and he submitted his requests to charge, and, of course, I assumed that we would immediately proceed to the summations and the charge to the jury and hopefully this case would be concluded today. However, Mr. Coffey, for the Government, revealed a set of circumstances that require that another witness be called.

I think it is incumbent upon the Court to put on the record exactly what was stated to the Court, with Mr. Hanken present:

Apparently Mr. McNamara last week learned that the witness Harvey Adam had been under a psychiatrist's care and that he had prescribed for him two drugs, Cogentin and Trilafon. The witness admitted taking these drugs prior to and on the stand while he was testifying.

Mr. McNamara also revealed that at the conclusion of Thursday's session Mr. Adam was found on the couch in the United States Attorney's office

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2 in a stupor and, upon questioning, did not even
3 recognize Mr. McNamara.

4 Further investigation on Friday, I believe,
5 by Mr. McNamara, revealed that the witness had
6 been seeing Dr. D'Apice, and that in conversation
7 with the doctor learned that these drugs could
8 cause glaucoma, dry mouth, blurred vision,
9 nervousness and perhaps even some absent-minded-
10 ness with loss of memory. If the drug wears off,
11 the witness could become pugnacious -- or the
12 patient could become pugnacious.

13 At this point I conferred with Mr. McNamara,
14 Mr. Coffey and Mr. Hanken. Mr. McNamara revealed
15 approximately what I put on the record. Contact
16 having been made with Dr. D'Apice -- and he will
17 be here to testify at three o'clock -- the Court
18 finds that this information is highly relevant,
19 for several reasons:

20 One, an inference -- and only an inference --
21 might be drawn from the witness' testimony that
22 he was not taking any medication or drugs. I
23 have not made a complete study of the transcript,
24 because I only had the benefit of the court
25 reporter reading back certain sections to me. I

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2 find that there was cross-examination concerning
3 the witness' use of pills and drugs and other
4 medications, but I do not find a direct conflict
5 that might amount to perjury. However, at one
6 point he said "I don't take drugs." Later on
7 he did say he had prescriptions from doctors, and
8 mentions a Dr. Climan. At no time did he
9 mention Dr. D'Apice, at least according to our
10 best information at this point.

11 Secondly, as the record even in the cold
12 written form would indicate, the witness was
13 ambiguous, confused, contradictory and, without
14 stretching a point, very close to committing
15 perjury throughout his testimony.

16 Therefore, for those and other reasons, it
17 seems to the Court crystal-clear that the jury
18 have the benefit of Dr. D'Apice's testimony with
19 respect to the type of drug the witness was
20 taking prior to and on the stand during his
21 testimony, how that in any way might affect his
22 testimony and any other information that he can
23 impart which would reflect on the witness' physical
24 condition, mental condition and credibility while
25 testifying in this courtroom.

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2 The Court also wishes to note for the
3 that despite the protestations of the Assistant
4 United States Attorney, the Court feels he was
5 obligated to impart this information much sooner
6 than this morning, if not to the Court, at least
7 to Mr. Hanken. Apparently the Assistant United
8 States Attorney was well aware of this situation
9 on Friday, and I believe the delay in relaying
10 this highly important information until the
11 eleventh hour, when I am about to take the bench
12 to charge the jury, has caused an inconvenience
13 and a delay that is unnecessary, and, certainly,
14 if we had known about this over the weekend or
15 even yesterday, we would have been prepared this
16 morning to put Dr. D'Apice on the stand.

17 With that, I think the best way to proceed
18 at this point is to bring in the jury, excuse them
19 until three o'clock. Hopefully the testimony
20 should be completed by five, and we will have the
21 summations and charge tomorrow morning. I will
22 have some of the other matters scheduled go over.

23 Bring in the jury.

24 (Jury present)

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25 THE COURT: You may be seated, Ladies and

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2 Gentlemen.

3 Ladies and Gentlemen, at the outset, please
4 accept my sincerest apologies for keeping you in
5 that jury room so long this morning without an
6 explanation as to why we are in a delay. However,
7 because of certain information that has been
8 relayed to the Court, we find it necessary that
9 another witness be called. Since he is a doctor
10 and we are trying to be as amenable to his
11 schedule as possible, it took us this time to get
12 him on the phone and get him over here, and he
13 will appear at three o'clock this afternoon.

14 As it now stands, it appears that this case
15 probably, in all probability, will go to the jury
16 tomorrow and not today, as I originally thought.
17 Please do not discuss this case; do not read
18 about it; do not talk about it even among
19 yourselves.

20 You are now excused until three o'clock this
21 afternoon. Thank you for bearing with us.

22 (Court recessed until 3:00 o'clock p.m.)

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AFTERNOON SESSION

3:05 P.M.

1 THE COURT: Has the doctor arrived?

2 MR. COFFEY: No, your Honor.

3 THE COURT: All right. What is the
4 procedure for the background for the doctor's
5 testimony? Is it agreed that Mr. McNamara should
6 take the stand?

7 MR. HANKEN: Yes, your Honor.

8 THE COURT: Should Mr. McNamara and Dr.
9 D'Apice be considered prosecution witnesses,
10 defense witnesses or Court witnesses, or jointly
11 called by defense and prosecution? We must set
12 the stage. You have not rested in front of the
13 jury, Mr. Hanken.

14 MR. HANKEN: Right.

15 THE COURT: So I assume that as far as the
16 jury is concerned all that has happened is that the
17 Government has rested.

18 MR. COFFEY: That is correct.

19 THE COURT: So I guess we have some
20 flexibility.21 MR. HANKEN: I would just as soon make them
22 my witnesses.
23
24
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1
2 THE COURT: The Government has rested, and
3 you are up to bat.

4 MR. HANKEN: Right. I would just as soon
5 make them my witnesses.

6 THE COURT: All right.

7 Is Mr. McNamara available?

8 MR. COFFEY: Yes, he is. He is actually
9 standing lookout for Dr. D'Apice downstairs, but
10 he is available if you want to start with him,
11 your Honor.

12 THE COURT: Why don't we. It is late in
13 the day.

14 MR. HANKEN: Your Honor, perhaps I ought
15 to make this comment before he is called and sworn
16 in.

17 THE COURT: Yes.

18 MR. HANKEN: I am just going to direct my
19 questions to the incident that happened last
20 Thursday with regard to Mr. McNamara and what
21 was related to him by Mr. Adam and what he said to
22 Mr. Adam, and, as I say, just questions relating
23 to last Thursday. I am not going to go into any
24 statements Mr. Adam may have made to him in
25 previous weeks or previous days with regard to why

JAMES P. McNAMARA, called as a witness
by the defendant, having been previously duly sworn,
was examined and testified further as follows:

THE COURT: Mr. McNamara, you have previously been sworn.

THE WITNESS: Yes, your Honor.

THE COURT: Consider yourself still under oath.

DIRECT EXAMINATION

BY MR. HANKEN:

Q Mr. McNamara, directing your attention to last Thursday, which I believe was the last day of testimony last week --

A Yes.

Q -- calling your attention to approximately three or four o'clock --

A Yes.

Q -- did you have occasion to see Harvey Adam outside the courtroom?

A Yes, I did.

Q Where did you see him?

A Down the U. S. Attorney's office.

Q Was he in there alone when you saw him?

A I believe there was a secretary in there readying

the place up for the new U. S. Attorney. She was in and out.
I don't know if she was in there that precise moment or not.

Q When you walked in, where was Mr. Adam?

A Sleeping on the couch.

Q Lying on a couch?

A Lying on a couch.

Q Did he appear to be sleeping to you?

A Yes, he did.

Q Did you approach him?

A Yes, I did.

Q Did you wake him?

A Yes, I did.

Q Did you ask him anything?

A No, I didn't ask him anything.

Q Did he say anything to you?

A No, he didn't say anything to me. I just shook
him and told him to get up, that's all.

Q Did he indicate whether or not he recognized you?

A Not at that time, no.

Q Did he appear to recognize you?

A Not when he first got up, no.

Q Did he say to you something to the effect of who
are you?

A Yes, he did.

1 Q Did he indicate that he did not know where he was?

2 A I'd say about a minute or two later we were
3 walking down the hall. I got him out of -- to explain it.
4 I woke him up and he stood up and we started walking down the
5 hallway towards the elevator, and he was sort of staggering,
6 and I asked him what's the matter, and he said to me "Who are
7 you?"

8 Q This is as you are walking towards the elevator?

9 A Towards the elevator, yes.

10 Q Approximately how far is the elevator from the
11 U. S. Attorney's office?

12 A Maybe 75 to 90 feet.

13 Q You were walking together?

14 A I was about two steps ahead of him. He was
15 dragging behind me.

16 Q When you say "staggering," can you give us more
17 detailed description of how he was walking?

18 A Sort of shaking -- well, as if he maybe -- like
19 a -- intoxicated, or he didn't exactly know where he was at
20 that precise moment.

21 Q So he appeared to be intoxicated to you?

22 A When I say intoxicated, I'm talking about the
23 description of an intoxicated person.

24 Q Yes.

A He was staggering.

Q An intoxicated person would appear --

A Staggering a little bit.

Q And he indicated to you that he did not know where
he was?

A Yes, he said "Where am I?"

Q And he also indicated to you that he did not know who you were?

A : That's right.

Q I believe you testified on direct examination that you had spoken to him about forty or fifty times?

A Yes.

Q Would you characterize his manner and his state of mind as being in a stupor?

A It's hard to characterize it. I knew there was something wrong with him. He wasn't acting the way he had been in the past. I knew that.

Q Let me ask you this:

Did you ever characterize his behavior or his manner or his state of mind to me as being in a stupor?

A Like he appeared -- he didn't know where he was, he didn't know who I was, and he took me by surprise when he said that.

Q Yes. If you would just answer my question. Did

you at one time characterize his manner and state of mind to me and characterize it as you thought he was in a stupor?

A I may have. I don't recall.

Q You do not recall whether you said that or not?

A Whether I used the word "stupor" or not. It's hard to visualize. I mean it took me by surprise he didn't know where he was and who I was.

Q Do you recall having a conversation within the past several hours with certain members of the Judiciary --

A Yes.

Q -- and myself and Mr. Coffey?

A Yes.

Q And you recall using the word "stupor"?

A No, I don't. I don't recall using that word, no.

Q You are not saying you did not use it?

A No, I'm not saying I didn't.

Q You might have used it?

A I may have.

Q Did he mention to you whether or not he had taken any drugs that day? I am talking about Thursday.

A Yes, he had.

Q Did he tell you what kind of drugs he took?

A He had some prescription -- I can't answer that question. He didn't tell me what. I asked him what pre --

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1 pills he had taken. He handed me two prescription bottles.

2 Q When you say prescription bottles, what does that
3 mean?

4 A A little capsule that you get from a pharmacy.
5 It has the name of the pharmacy, the type of drug, usually the
6 type or the -- directions for the medication, and a doctor's
7 name on the bottom.

8 Q Yes. But you do not know what type of pills were
9 in the bottle; isn't that true?

10 A That's true.

11 Q In other words, they could have been a very potent,
12 powerful drug, for all you know?

13 MR. COFFEY: Objection.

14 THE COURT: Sustained.

15 BY MR. HANKEN:

16 Q Do you know the type of pill that was in the
17 bottle?

18 A Just from the label.

19 Q You do not know the kind of pill; you did not have
20 it examined or anything; did you?

21 A No, I didn't.

22 Q So you just assumed that the type of pill that was
23 labeled was the type of pill that was in the bottle?

24 MR. COFFEY: Objection again as to what he

1
2 assumed, your Honor.

3 THE COURT: Yes, sustained.

4 BY MR. HANKEN:

5 Q You do not know as a fact, do you, what type of
6 pill was in the bottle?

7 A No, I don't.

8 Q What did the label say with regard to the kind of
9 pills they were?

10 A Can I refresh my recollection? I wrote it on a
11 piece of paper.

12 Q Sure.

13 A One was C-o-g-e-n-t-i-n --

14 Q Would you spell that again, please?

15 A C-o-g-e-n-t-i-n -- and the other was Trilafon,
16 T-r-i-l-a-f-o-n.

17 Q So there were two bottles?

18 A Two capsules, yes.

19 Q Two bottles or two capsules?

20 A Plastic capsules.

21 Q Plastic containers?

22 A Containers, yes.

23 Q Did you see how many pills were left in each
24 container, or were there any pills in the containers?

A Oh, yes, there were pills. I'd say maybe ten or

1
2 fifteen. I'm not sure. I didn't count them.

3 Q And you gave them back to him then?

4 A Yes, I did.

5 Q Did he tell you that he had taken them that day?

6 A Yes, he did.

7 Q That was both the Cogentin and the Trilafon?

8 A Yes, sir.

9 Q Did he tell you how much of each he took?

10 A Approximately five of each.

11 Q Did he tell you when he took them?

12 A During the day.

13 Q That was while he was testifying on the stand?

14 A Yes.

15 Q Did he tell you that he took them before he
16 testified, while he testified and after he testified, or did
17 he pin down exactly when he took them?

18 A No, he did not.

19 Q Didn't he tell you he took them while he was on
20 the stand?

21 A Told me "while I was on the stand yesterday."

22 Q Those were his words, "while I was on the stand"?

23 A Yes.

24 Q Did the label indicate how much he should take
25 during the 24-hour period?
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A One three times daily for each prescription.

Q One three times daily?

A Right.

Q So that is one every eight hours?

A One pill every eight hours, I would assume, each day.

Q And he took five of each --

A That's correct.

Q -- that day, so that is ten --

A That's right.

Q -- in a period of while he was on the stand?

A I can't say the period while he was on the stand. I don't know.

Q Just his words to you "while I was on the stand"?

A Right.

Q I am just using his words.

What happened after you went down the elevator with him?

A We walked over to my car about two blocks from here.

Q Where did you go then?

A I took him home.

Q Did you see him again that day?

A No, I did not.

Q That was your only relationship with him that day?

1 A That's right.

2
3 Mr. HANKEN: Thank you very much.

4 THE COURT: Mr. Coffey.

5 MR. COFFEY: Thank you, your Honor.

6 CROSS-EXAMINATION

7 BY MR. COFFEY:

8 Q Agent McNamara, did you disclose this information
9 to Mr. Hanken?

10 A Yes, I did.

11 Q And to the Court?

12 A Yes, I did.

13 MR. HANKEN: Excuse me, your Honor. I do
14 not think the jury should be left with the
15 impression I knew this last Thursday.

16 Q When did you disclose it?

17 A This morning.

18 Q When Mr. Adam told you that he had taken four or
19 five each of Cogentin and Trilafon, did he explain why he took
20 them?

21 A Yes, he did.

22 Q Would you tell us what his explanation was?

23 A He said he was extremely nervous.

24 Q Did he give any other reason?

25 A No, he did not.

Q Did you take him directly home?

A Yes, I did.

Q Were you able to communicate with him?

Let me up and ask you: Did he appear to know who you were as you drove home?

A Yes, he did, yes.

Q Did you have a conversation with him when you went home with him?

A Yes, I talked to him.

Q Did you talk about these pills at all on the drive home?

A I think I told him the prescription called for one three times a day and he shouldn't have taken any more.

Q What was his response to that?

A He was nervous.

Q Did he appear nervous at that time, as you were driving home?

A No, I wouldn't say. He wasn't too nervous, no.

Q Did you notice any difference in the way he talked to you in the ride home as opposed to when you first talked to him after you woke him up?

A Yes, he was more coherent.

Q How much time had transpired between your conversation with him in the hallway in this building and the

2 ride home?

3 A I'd say it took us an hour and five -- maybe an
4 hour and fifteen minutes, an hour and twenty minutes.

5 Q Do you have any idea at what point in time as you
6 drove home he appeared to be meeting an agreement of the mind;
7 that is, understanding what was said?

8 A I'd say maybe after a half an hour.

9 Q Did he indicate where he got these pills?

10 A He said he got 'em from his doctor.

11 Q Did he name the doctor?

12 A Dr. D'Apice, psychiatrist.

13 Q Did he tell you where Dr. D'Apice was located?

14 A Yes, he did.

15 Q Did you contact Dr. D'Apice?

16 A Yes, I did.

17 Q When was that?

18 A I contacted him Friday noon.

19 Q Did he tell you what instructions he had from Dr.
20 D'Apice?

21 MR. HANKEN: Objection, your Honor, as to
22 any instructions from Dr. D'Apice.

23 THE COURT: Have you given us the entire
24 conversation last Thursday, or have you left
25 something out?

1
2 THE WITNESS: That's the entire conversation
3 for Thursday, your Honor.

4 THE COURT: I will sustain it on the ground
5 of leading -- well, this is cross-examination, I
6 suppose. I think I will overrule myself and allow
7 you to ask that question.

8 MR. COFFEY: Thank you, your Honor.

9 THE COURT: On Thursday. We are talking
10 about Thursday, Mr. McNamara, and the conversation
11 between you and Mr. Adam.

12 Or are you asking about --

13 MR. COFFEY: I am asking Thursday.

14 THE COURT: -- asking about Dr. D'Apice?

15 MR. COFFEY: My question is did he indicate
16 on Thursday what instructions he had from Dr.
17 D'Apice.

18 THE COURT: I will allow that be answered.

19 MR. HANKEN: I will withdraw my objection.

20 A No, he did not.

21 Q Did he indicate that at any time?

22 A Yes, he --

23 Q When did he indicate that in point of time?

24 A Oh, I'd say the preceding Friday on --

25 168 MR. HANKEN: Your Honor, I will object to

2 that because I specifically confined myself to
3 Thursday.

4 THE COURT: That is right. Sustained.

5 BY MR. COFFEY:

6 Q I take it from your testimony on direct that you
7 returned these pills to Mr. Adam?

8 A Yes, I did.

9 Q Did they appear to you to be in proper prescription
10 capsules, as you know them as a layman?

11 MR. HANKEN: Your Honor, I will object to
12 that, because I do not see how this witness could
13 answer that question without having the pills
14 here.

15 THE COURT: I thought he already answered
16 it. He said that the pills appeared in the type
17 of prescription capsule, and then somebody said
18 container, and he said yes, prescription container.

19 MR. COFFEY: Let me rephrase it, please,
20 your Honor.

1 THE COURT: So I will overrule the objection.
2 I think he has already testified to it.

3 Q Did they appear to be in -- normally given in a
4 prescription?

5 A Yes, they did.

Q Did he take any, incidentally, on his way back to his home?

A No. I had them in my pocket most of the time on the way back.

Q Did you give him back the pills at the end of the same trip, the same day? On Thursday?

A Yes, I did.

MR. COFFEY: All right, thank you, Agent McNamara.

REDIRECT EXAMINATION

BY MR. HANKEN:

Q Just one other question, sir:

Why did you keep the pills in your pocket? Why didn't you give them back to him in the U. S. Attorney's room?

A I did not get them from him in the U. S. Attorney's room.

Q Where did you get them from?

A I was sitting in my car when he told me about it, on the way over; when we were over there I asked to take a look at the pills and he handed them to me.

Q Start again, please.

A I was not in the U. S. Attorney's office when I obtained the pills.

Q Did not ask him about these pills -- didn't any

2 conversation about the pills occur in the U. S. Attorney's
3 office?

4 A Not in the U. S. Attorney's office, no, sir.

5 Q When did the first conversation about the pills
6 occur?

7 A I'd say we were down on the front steps of the
8 Post Office.

9 Q And he had the pills in his pocket?

10 A Yes.

11 Q And he showed them to you?

12 A He said he had pills in his pocket.

13 Q What did you say to him?

14 A Didn't say anything to him. I just told him to
15 walk to my car with me.

16 Q And the pills were still in his pocket?

17 A Still in his pocket.

18 Q When did the pills get from his pocket to your
19 pocket?

20 A When we got into the car I asked him to show me the
21 pills.

22 Q And he showed them to you?

23 A He did.

24 Q And you put them in your pocket?

25 A Yes, I did.

1 Q Why was that?

2
3 A I had my coat off. I didn't have a pencil. I
4 wanted to write the names down, and we already started to
5 drive, and I figured when we got to his home I'd write down
6 the type of pills it was.

7 Q You kept the pills in your pocket all the way
8 during the trip?

9 A Right.

10 Q Why didn't you just write down the names of the
11 prescriptions right in the car before you started your trip?

12 A Because we had already started -- the car was
13 already in motion when I asked for the pills. I didn't have
14 my glasses on, and I need glasses to write with, so I just
15 kept them in my pocket, and when we got to Newtown -- Monroe,
16 Connecticut, I wrote down the names of the pills on a piece
17 of paper and handed the pills back to Mr. Adam.

18 Q Are you sure it is not because you did not want
19 him to take any while you were driving with him?

20 A No, sir.

21 MR. HANKEN: Thank you.

22 MR. COFFEY: That is all.

23 THE COURT: Just one question, Mr. McNamara:
24 The ride home -- was that a prearrangement
25 that you had with Mr. Adam?

2 THE WITNESS: Yes. I drove him up and I
3 drove him back.

4 THE COURT: Thank you. You are excused,
5 Mr. McNamara.

6 MR. COFFEY: Thank you.

7 (Witness excused)

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Yes.

-- have you handled any bonds and mortgages?

✓ -- I think we've got the one given to the company, Boston
200,000 dollars.

21 -- I have that, yes.

22 -- I have that, yes.

1
2 JOSEPH D'APICE, called as a witness by the
3 defense, having been first duly sworn by the Clerk of
4 the Court, was examined and testified as follows:

5 THE CLERK: Please be seated.

6 Q: What is your full name, please?

7 A: THE WITNESS: Joseph D'Apice.

8 THE CLERK: Spell your last name, please.

9 THE WITNESS: D-apostrophe-capital-A-p-i-c-e.

10 THE CLERK: And your address, please?

11 THE WITNESS: 545 Mill Plain Road,
12 Fairfield, Connecticut.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. HANKEN:

16 Q Dr. D'Apice --

17 A Yes.

18 Q -- have you brought any books and records or
19 documents or reports with you relative to one Harvey Adams?

20 A Yes, I have.

21 Q May I see them, please?

22 A Surely. It's very limited material. I keep
23 limited records.

24 MR. HANKEN: Your Honor, just give me a
25 minute just to take a look at this.

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205 CHURCH STREET
NEW HAVEN, CONNECTICUT

Q I presume this last notation you have --

A Today, I saw him today.

Q -- is today's?

A Yes.

Q And these other two were written on the dates
specified up above, or were they made copies of something?

A The second one was postdated. They were written
today.

Q These also?

A Not the first one. The first one is the major
record. Like I tell you, I take limited notes.

Q This is the one dated July 8th of 1974?

A That's correct, that's the first visit.

Q And one date is August 9th of 1974?

A That's right, August 9th and also August 20th
were done today.

Q Did you copy August 9th's notations from any other
documents or records?

A No. No.

Q Why did you put down something for August 9th.

A Because I felt I needed some continuity in the
chart with the developments which have occurred.

Q Let me ask you this:

When was the first time you saw Mr. Adams?

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HANOVER
NEW HAVEN, CONNECTICUT

905 CHURCH STREET
NEW HAVEN, CONNECTICUT

1
2 A I saw Mr. Adams on 7/8/74.

3 Q By the way, is this the first time we have ever
4 met, have ever talked?

5 A Yes.

6 Q Today?

7 A Yes.

8 Q You first saw him July 8, 1974?

9 A Yes, that's correct.

10 Q When is the next time you saw him?

11 A 7/16.

12 I can give you all the dates, if you wish.

13 Q All right.

14 A 8/6, 8/9, 8/16, and, of course, today, 8/20.

15 Q So we have reports for July 8th, August 9th and
August 20th?

16 A That's correct. However, as I must say again,
17 my -- most of my information is kept in my head.

18 Q Was he referred to you by someone?

19 A Yes, he was. He was referred to me by a
20 general practitioner in the Trumbull area by the name of Dr.
21 John Willis.

22 Q He was never referred to you by a Dr. Climan?

23 A No.

24 Q Or any name similar to that?

1 A I do not know a Dr. Climan; that's correct.

2 Q Did he ever mention a Dr. Climan to you?

3 A No, he did not, not to my knowledge.

4 Q Dr. Willis was his family doctor?

5 A Yes.

6 Q And you talked to Dr. Willis?

7 A Yes, I've talked to Dr. Willis.

8 Q Did Dr. Willis indicate to you why he was sending
9 him over to you?

10 A Surely. I'll give you that story --

11 MR. COFFEY: I must object, your Honor.

12 It would be hearsay as to what Dr. Willis said.

13 MR. HANKEN: I would hate to have to call
14 in Dr. Willis.

15 THE COURT: Are we eventually going to get
16 a question of diagnosis and prognosis?

17 MR. HANKEN: Yes, your Honor.

18 THE COURT: All right. Is there going to
19 be an objection to that ultimate question?

20 MR. COFFEY: If I understand what is going
21 to be asked, the answer is no. Prognosis as to
22 what? As to his --

23 THE COURT: Of course, the rule of law is
24 that if a doctor is going to testify to his

prognosis or diagnosis and he relied in part on the statements of another professional to form that diagnosis and prognosis, then everything that he relied on can come in, even the hearsay statements of another doctor.

On the other hand, if you are going to object to that ultimate question, I am not going to let the foundation question in for that ultimate question till I hear you.

MR. COFFEY: No, no. I am willing to let that come in, your Honor. But there may be a prognosis for a number of different things, and there is no basis at this point to know whether Dr. Willis' comment has any relation to what the ultimate question is going to be, prognosis --

THE COURT: It is a simple question, then. Doctor, eventually you are going to be asked about your diagnosis and maybe your prognosis.

THE WITNESS: Yes, sir.

THE COURT: I am not sure. But did you rely in whole or in part in forming that opinion on anything Dr. Willis said?

THE WITNESS: I must say no, because I talked to Dr. Willis after I had seen the patient.

THE COURT: The objection is sustained,
therefore.

MR. HANKEN: All right.

BY MR. HANKEN:

Q Doctor, I presume when he came in he indicated some complaint to you?

A Yes, he did.

Q He was having some troubles?

A Yes.

Q Some mental problems?

A Mental problems, that's correct.

Q I presume it is customary for you to write the pertinent things down that a prospective patient tells you about his problems?

A That's correct. Not specifically necessarily. I think if you will see in my note I was more interested in the diagnosis of a psychotic depressive reaction and also in the fact that he has history of drug use in the past, and also that he was delusional, hearing noises, hearing music, hearing a buzzing sound. These were pertinent things to me.

Q Giving us a lot of meat there. You will have to go a little slow.

A That little bit means a lot to me when I look at it.

Q I'll tell you: Why don't you read your notes of July 8th. This is his first visit? Would you read the notes so that the ladies and gentlemen of the jury can hear you?

A All right. I don't have my particular good glasses on. We'll go very slow, because I'm having a little difficulty, reading difficulty, at this point.

MR. COFFEY: Excuse me, your Honor. First of all, I have not seen the document, and it is not in evidence. I do not know if there is a question, secondly.

THE COURT: If that is an objection, it is sustained.

MR. COFFEY: Yes.

MR. HANKEN: I am sorry.

THE COURT: Very well.

BY MR. HANKEN:

Q Do you recall the chief complaints of Mr. Adams when he first visited you on July 8th and the reason that he consulted you on July 8th?

A Yes.

Q If you have any difficulty in recollecting, I will leave the report.

A Okay.

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THE COURT: Doctor, may I explain this to you, because perhaps you are not aware of all the sometimes very rigid rules of court, but you should try to testify from your recollection. However, you may refresh your recollection by looking at your notes.

THE WITNESS: Okay.

THE COURT: So feel free to look at your notes after you have exhausted your recollection.

THE WITNESS: Okay. Fine. I really don't need them—

THE COURT: Very well.

THE WITNESS: -- because I rely mostly on my recollections for my -- my work.

A (Continuing) Mr. -- may I give a little bit of the history?

Q Sure.

A Mr. Adam had originally told me that he sought out Dr. Willis early in the morning because he was extremely nervous and he could not cope; things were falling apart around him. He was very concerned about a recent divorce that he had had. He was concerned about various other personal problems relating to the divorce, relating to his business.

Q All right.

A These were mainly the chief complaints, and that he could not cope.

It was at that time he gave me symptoms which indicated that he was suffering from a severe depression.

Now, that's a rather general term, but, to kind of qualify it a little bit, Harvey was psychotic at the time. In other words --

Q Sir, if I can just interrupt you, can you tell the ladies and gentlemen of the jury what severe depression is, and then would you define for us what psychotic is?

A Right.

"Depression" I think is a rather general term which everyone generally recognizes, but the term "depression" to a psychiatrist represents a certain constellation of symptoms which can be varied. We have certain vegetative signs of depression, such as early morning awakening, various bodily problems, such as constipation or various other symptoms. This is a condition which a person feels extremely blue, that he -- it's a prime disorder or mood or what we call an affect, with multitude and a myriad of symptoms, which, if -- it would be too numerous to mention.

Q Is the inability to recollect events accurately or even care about recollecting events accurately a symptom of --

A Yes.

Q -- a severe depression?

A Yes, a poor concentration.

Q Poor concentration?

A Poor memory, yes, that's correct.

Q All right, proceed.

A Okay.

Now, psychotic takes it a step further, in that there is a certain loss of reality testing, and reality testing means there is an inability to decide, to discern, what is inside you from what is outside you.

Q By that, can a layman take that as being not being able to distinguish reality from unreality?

A That's correct. It's almost like with your eyes wide open you are dreaming, so to speak.

Q All right.

A I mean that's an oversimplification, but I think you get the idea.

Q Could you give us some symptoms of a person -- would you say it is a psychotic personality or psychotic disorder?

A Psychotic reaction or a disease.

Q Or a disease?

A Yes, it's a psychosis.

Q By the way, as a psychiatrist you are engaged in
the study of mental diseases?

A Or disorders, that's correct.

Q Diseases or disorders?

A Right. This is a difficult term, because some people -- depending on how you want to look at it, okay.

Q Can you give us some symptoms of a person with a psychotic problem, as Mr. Adam had, with regard to ability to recall events, ability to understand the truth and meaning of an oath, and so forth?

A Very often with a psychotic depression of this nature the person becomes extremely paranoid. I think people are pretty familiar with that word. It's suffering from feelings of persecution. All right.

Q In other words, would --

THE COURT: Why don't you let the doctor finish.

MR. HANKEN: Okay. Sorry, your Honor.

THE COURT: And then you can proceed.

Go ahead, Doctor.

A And very often the person can be paranoid or delusional, which means having false beliefs. Okay. He might feel that people in his family are out to get him, other people are out to get him, or someone's out to do him in, so to speak.

This is one very important symptom, which does not always occur, incidentally.

In psychotic depression, these delusions are usually very prominent, okay; yet the person may be partially in touch with reality at times. Very often when the person is under stress a lot of his -- what we call his defenses will break down, and again the paranoid thoughts will develop. He may have periods of time where he is not aware-- he is aware that some of his thinking is false.

Q If I may just ask you this, sir, during periods of stress you say these delusions will reoccur?

A Very, very frequently, yes.

Q If a man were to testify on a stand in a case which is, let's say, unpleasant to him -- and especially with regard to Harvey Adams, with all his preexisting problems that you know of -- would you call that a period of stress?

A Yes, that is a period of stress.

Q So it is quite possible, at least in your view, that Harvey could have been having these delusions--

A Yes, it is probable.

Q -- and these reactions while he was testifying under oath? X

A It is probable. It is probable, yes.

Q It is probable?

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A Yes, it is probable.

Q I take it that it is likewise probable that, if he were having these delusions of persecution and so forth, these other paranoid reactions, while under oath, he really could not appreciate the true essence and meanings of his oath?

MR. COFFEY: Objection, your Honor. That is hypothetical. I do not think there are facts before this witness to testify whether in this case he could have --

THE COURT: We have a witness on the stand who is an expert, and I am sure -- and if I have to so instruct you, Doctor, which I am sure I do not -- I am sure that if he is not qualified to answer or his unable to, he won't. But if he has an opinion, he may express it.

So I will overrule the objection and leave it to the doctor to handle himself with respect to the question.

THE WITNESS: Would you repeat the question?

(The pending question was read by the reporter as above recorded.)

A That is a probability.

Q Thank you, sir.

I believe you just testified that one of the

primary manifestations of the psychotic reaction is that the person feels he is being threatened?

A Very often. There are many other symptoms, too, but this is a very common one.

Q You indicated something about that he told you on July 8th he had used drugs?

A That's correct.

Q Did he specify which drugs he had used?

A He had used amphetamines.

Q Amphetamines?

A Uh huh.

Q Are you at all qualified, at least in your opinion, to tell us what amphetamines are or what is the effect of amphetamines?

A Well, amphetamines in the vernacular is Speed.

Q Speed?

A I think most people have read about Speed in the literature, Dexedrine type of drugs, the diet pill type of drugs, the types that stimulate.

Q Could you tell us what effect that would have on a person's nerve center?

A Well, they cause a tremendous speeding up of the metabolism, okay, and they cause a person to be very hyper-active, very excitable, flying high.

1 Q Flying high?

2 A Flying high.

3
4 Very often on withdrawal of these drugs the
5 person will become depressed. This is one of the reasons why
6 I must ask what drugs a person has been on, for the simple
7 reason that depression can be precipitated by the amphetamine
8 type of drugs.

9 Q Then according to the history that you took and
0 the conclusion that you reached that he was suffering from a
1 severe depression, at least on the initial visit --

2 A Yes.

3 Q -- couldn't one conclude that he was suffering
4 from this depression because of withdrawal symptoms, so to
5 speak?

6 A This is a difficult thing. I think that it has
7 to be considered, all right. But in the ultimate analysis
8 the treatment is the most important thing.

9 Q But that was a possibility on July 8th?

10 A That's a possibility, a definite possibility.

11 Q Did he mention to you anything about hearing
12 sounds at all?

13 A Yes.

14 Q I take it sounds then were not really there?

15 A That's correct, buzzing sounds.

Q Would you describe the sounds. Buzzing sounds?

Anything else?

A Buzzing sounds, music.

Q What is this called, medically speaking?

A Auditory hallucinations.

Q In other words, he was hallucinating at that time?

A That's correct.

Q Do you know how long a period of time prior to that
he had heard music or buzzing?

A No, I could not give an answer. He was very vague
at the time. The boy was quite disorganized when I first saw
him.

Q Did you ask him how long he had had his problem?

A Yes, but it was still not specific. It's very
difficult to get a specific answer in a case like this,
because very often the person is not really aware of how long
it is. It kind of insidiously creeps up on the person, so you
very often get a very sketchy, vague, nebulous history in this
case.

Q Would you say a person like that loses his
concept as to time, dates, places?

A Oh, definitely.

Q No question about that?

A No question about that, particularly if there is

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2 organicity; in other words, organic involvement with a toxic
3 substance like a drug. All right.

4 However, at the time I saw Harvey, I felt that it
5 was difficult for me to decide. Okay. Sometimes you really
6 cannot decide whether a person is suffering from what we call
7 an endogenous depression, something that comes within, or an
8 exogenous or reactive type of thing or toxic type of thing.
9 When you see someone as sick as this, the important thing is
10 to treat them as quickly as possible.

11 Q When you say "as sick as this," is there a
12 medical classification for a person in Mr. Adam's mental
13 condition?

14 A Yes, and the diagnosis would be psychotic
15 depressive reaction, etiology to be determined. Etiology,
16 if it were drugs, would only be found in retrospect.

17 Q I take it we laymen can call this a severe -- a
18 serious mental condition?

19 A A serious mental condition, yes.

20 Q I wonder if you might read this.

21 A Where would you -- "Harvey Adams, a 28-year-old" --

22 Q Over here. I cannot read your writing.

23 MR. COFFEY: I am sorry, I am missing this
24 whole --

25 130 MR. HANKEN: I cannot read his writing.

THE COURT: Mr. Hanken is not intending to have the doctor read from his notes, but only Mr. Hanken has indicated he cannot read the doctor's notes. If there any objection if the doctor confides with Mr. Hanken as to what those notes mean? I mean what they say, rather.

MR. COFFEY: Sure, go ahead.

MR. HANKEN: Thank you, and then I will tell you.

A Denies suicide, homicidal thoughts, which are very significant to me. This is his place of business. Okay. Also his business had two fires.

I think there were just a couple of things I put down to mention the stress that I had -- that he had had.

Q Did he mention to you about having any fires in his business?

A Yes, he did.

Q Did he indicate how many he had had?

A He said two.

Q Now referring to August 9th of 1974, I presume when he came in August 9th you wrote down the important things that Harvey had to say?

A I don't usually write down things except for the initial interview.

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Q I mean you did write some things down for August 9th?

A I wrote, yes, but I wrote them, as I said, perhaps not technically correct, but I had done for only continuity, for the record's sake.

Q Did Harvey have any difficulty getting to your office?

A Yes.

Q I notice that you made a specific reference to that?

A Yes. This was a thing that -- on several occasions he had gotten lost coming over to the office.

Q Why would that be something you would specifically note?

A Well --

Q I mean is there something unusual about that or any reason he should not have gotten lost?

A Yes, because he was able to make it the first time, even though he was ill. He then, after I had gone on vacation, had a reaction to the -- one of the initial drugs that we had put him on --

Q By the way, what drug was that?

A That was -- he is on -- he was on Stelazine at that time.

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Q Could you spell that for us?

A Sure, S-t-e-l-a-z-i-n-e.

Q So you are indicating to us what was unusual about his getting lost that day?

A Right. He had been on Stelazine at that time, and he had a bad reaction to it, and then he began suffering from serious anxiety. I gave him various other medications via the telephone, one of which was Valium, and the following day, when he had his office appointment, he was -- he came with his wife -- he was a half hour late, and he had called the office a few times asking for directions, quite upset over the fact that he had not been able to find his way over to the office. This concerned me, because I felt he was having a serious relapse, because he was making some progress, very good progress.

He again got lost last week.

Q When you say "last week," what date are you talking about?

A 8/16. I'm sorry.

Q August 16th?

A Yes.

Q What did that mean to you?

A I was concerned again. But when I saw him in the office he was pretty much alert and apparently he had just

2 run out of gas and had taken a wrong turn, but was quickly
3 able to come to the office after -- within a span of about
4 five minutes, which I felt was better, fortunately.

5 Q Would you tell us what bad reactions he had to
6 Stelazine?

7 A He had what we call an akisthisia. This is a
8 reaction in which a person gets extremely jittery, where
9 they feel like they're flying and they can't sit down.
10 Stelazine is a major tranquilizer, but one of the side
11 effects of the drug -- and there are many of all of these
12 drugs that we have to use -- is this akisthisia.

13 Q Would that make a person feel nervous?

14 A Very nervous, very kittery; in fact, like they
15 were "speeding."

16 Q Would you tell us what other medications you
17 prescribed for him?

18 A Certainly. He is also on -- we changed the
19 Stelazine to a drug called Trilafon.

20 Q Is that stronger or weaker than Stelazine?

21 A Well, relatively they're all about the same, but
22 they vary in their side effects. They all belong to a group
23 of major tranquilizers which are in the same chemical group.

24 Q Was he taking Stelazine and Trilafon at the same
25 time, or was he supposed to?
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2 A The Stelazine was discontinued, Trilafon was
3 started.

4 He was also on Elavil, which is an antidepressant.

5 Q Elavil?

6 A Elavil, E-l-a-v-i-l.

7 And one more drug called Cogentin.

8 Q What is that?

9 A The Cogentin is actually an anti-Parkinson drug
10 for Parkinson's Disease, but, since many of these drugs must
11 cause Parkinson-like symptoms to react, we use an anti-
12 Parkinson agent hopefully in preventing any kind of these
13 side reactions to minimize the patient's discomfort, because
14 these drugs are not fun drugs.

15 Q What do you mean by they are not fun drugs?

16 A In other words, if you take a drug like Valium or
17 Librium, Meprobamate, Miltown, a sedative drug, a control
18 drug like Ritalin you will feel a pleasant feeling. If
19 you take one of the major tranquilizers, it is not a pleasant
20 experience unless you are very sick and you really need
21 medication.

22 Q And you would call this a major, serious drug,
23 Elavil, Cogentin and Trilafon?

24 A Yes. The Stelazine, the Trilafon and the Elavil
25 are in the major tranquilizer category.

2 Q How many pills would you recommend that a person
3 take, for his own welfare, of Cogentin and Trilafon and Elavil
4 in one day?

5 I will ask the first question: Do you recommend
6 a person take one of each of these kinds each day?

7 A Well, the object in the treatment with these
8 drugs is to try the rate — the level that the patient needs.
9 We want to use the minimum amount of drug necessary to accom-
10 plish the result; okay. So we arbitrarily pick a number which
11 we think might be all right from our own experience, because
12 there is no basic science to this, and treat accordingly.

13 The Elavil ranges from a -- in the psychiatric
14 level -- usually we -- in a depression such as Harvey, a
15 minimum of 150 milligrams is required.

16 Q Per day?

17 A Per day. Okay. He is presently up to 200
18 milligrams.

19 Q How about Cogentin?

20 A Cogentin is a -- as I said, is an anti side-effect
21 drug, and is just arbitrarily used to prevent the side effects
22 from the major tranquilizer, which is, in the cases mentioned,
23 Stelazine, Elavil and Trilafon.

24 Q I think you said Trilafon produces symptoms of
25 Parkinson's Disease?

2 A Yes.

3 Q Would you tell us what symptoms those would be?

4 A Well, the basic symptoms are that of a jerk,
5 sensations, tremors, also other extrapyramidal symptoms
6 which is all related to what we call Parkinson's, is just a
7 collection box sort of a thing. We have what we call
8 dystonic reactions, which is an actual twisting of the
9 neck backwards into a stiffening type of a thing, which is
10 very unpleasant, very scary type of experience if it does
11 occur, harmless but scary, the akathisia as I described
12 before, where the patient can't sit down.

13 These are some of the basic symptoms.

14 Q Would you tell us what effect these drugs have
15 on the nerve centers of a person's brain, of taking them each
16 day, especially a person in the same mental condition and
17 physical condition as Harvey Adams?

18 A We really don't know how they work or what they
19 do. They obviously can cause anything. They are very
20 potent drugs. If one got the Physician's Desk Reference and
21 one could list a whole constellation of symptoms, from liver
22 disease to permanent Parkinson type of reactions.

23 Q Is there any question but that, taking these drugs,
24 a person like Harvey Adams, in his mental and physical
25 condition at that time, would tend to --

2 A Deaden --

3 Q -- tend to render his ability to recall events
4 much less accurate than a normal person?

5 A Interestingly enough, no. Paradoxically, these
6 drugs, which might terribly adversely affect you, will
7 actually help a person who is suffering from a psychosis.

8 Q How many pills did you recommend of Cogentin that
9 he take a day?

10 A At the time he was taking one Cogentin for every
11 Trilafon he was taking.

12 Q And how many Trilafons?

13 A Three.

14 Q Three a day?

15 A Three a day.

16 Q That is one every eight hours?

17 A Approximately, yes.

18 Q That is one every eight hours of Trilafon and one
19 every eight hours of Cogentin?

20 A That's correct.

21 Q Can you tell us what effect you think that five
22 Cogentins and five Trilafons in a period of -- total 10 tablets --
23 in a period of five hours would have on a person such as Harvey
24 Adams?

25 A Actually, that is very hard to say. The

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difference would be probably negligible. It might help him if he were under stress; it might help him.

And, indeed, you are correct. Harvey did tell me that he -- on the day he was -- or one of the days he was a witness, that he had taken five Trilafon, five and five.

Q Did he tell you why he took them?

A Yes.

Q Why was that? Because he was nervous?

A He was nervous.

Q So at least he was nervous, as far as you are concerned, up until August 20th?

A Oh, that's correct.

Q And he was complaining of nervousness when you saw him July 8th?

A That's correct.

Q Apparently he was still complaining of nervousness on the other dates you saw him?

A That's right.

Q So apparently his condition had not gotten any better?

A Oh, no, he's much better.

Q Is he still complaining of the same nervousness that he complained of in July?

A No. He feels much better as far as his nerves

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2 are concerned.

3 Let me qualify this: He states it very clearly
4 that he's able to do his work better, he's able to work at his
5 business. He feels very comfortable in my office, he feels
6 very comfortable in his home. He's feeling more comfortable
7 with his parents.

8 Q He needed five pills of each on August 20th.
9 Did he ever tell you that he had taken five pills of each
10 before?

11 A Yes, he did, yes.

12 Q Would you tell us when that was?

13 A No. He told me that he had taken the five pills
14 when he was giving testimony here. The date I do not know,
15 but he had mentioned that.

16 Q Did he ever tell you previous to that that he had
17 taken five of each--

18 A Prior to what date?

19 Q -- during a five-hour period? Prior to August
20 20th.

21 A Prior to August 20th? Yes. I forgot which date
22 it was, but certainly he did tell me over the phone that he
23 had taken five pills, and I reprimanded him that I wanted him
24 to do exactly what I said.

25 Q So, in other words, there was a time that he was

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at least as nervous prior to August 20th as he was August 20th, when he took five of each? That is ten pills?

A Yes. But you are talking about different circumstances. You are talking under terms of stress. When he is not under stress he is doing fairly well.

Q You say that these are antidepressants?

A Yes. The Trilafon is a tranquilizer, a major tranquilizer. The Elavil is an antidepressant.

MR. COFFEY: I am sorry, I missed that last sentence.

THE WITNESS: The Elavil is an anti-depressant.

BY MR. HANKEN:

Q I guess we ought to get our terms straight.

What is the function of a tranquilizer?

A All right. This is a very difficult situation, because, you know, to a layman, a tranquilizer is something that just sedates a person.

Tranquilizers belong to a classification of various drugs. We call them neuroleptics, major tranquilizers. These are drugs all relating to various classifications used in the treatment of mental illness.

In minds, they all have antipsychotic potential, all right, and -- as opposed to antidepressive, which is an

2 antidepressant. Okay. They are usually given in high
3 doses, relatively high doses, to people who are psychotic.
4 How they work we are not sure. We do know that they work.
5 We believe that it -- we have certain theories, obviously,
6 but how they work we don't know.

7 Does that answer the question?

8 Q Yes, it does, Doctor.

9 A I could go into a long textbook explanation, but
10 I don't think it would be useful.

11 Q You do not have to.

12 MR. COFFEY: May I ask for a question and
13 answer procedure, please?

14 THE COURT: Yes.

15 BY MR. HANKEN:

16 Q So, in other words, the Elavil is an anti-
17 depressant?

18 A That's correct.

19 Q That is to lift you up, so to speak?

20 A Yes. But it doesn't make you high. I don't
21 want you to get the impression that's like Ritalin or an
22 amphetamine.

23 Q Trilafon is a tranquilizer? It sedates you?

24 A Sedation is a side effect.

25 Q What is the major effect of Trilafon?

2 A The major effect is to put things back into
3 order, to equalize things. Instead of tranquilizers they
4 should be called equalizers; okay.

5 Q I am afraid you will have to explain what you mean
6 by "equalize."

7 A Well, let us assume that the individual who is
8 undergoing a psychosis -- something is happening in the
9 brain. Various studies have shown that there are certain --

10 MR. COFFEY: Excuse me, Doctor.

11 Objection, your Honor. He is assuming
12 facts which are not in evidence. There has been
13 no basis at this time, and it may have no
14 relevancy at all to the person we are talking
15 about.

16 THE COURT: I thought you were defining
17 your use of the word "equalizer."

18 THE WITNESS: That's correct.

19 THE COURT: Yes. Overruled.

20 A -- that an individual who becomes psychotic, the
21 metabolism becomes disordered. There are various disorders
22 in the amounts of certain neurotransmitters in the brain.
23 Okay. The tranquilizers for some reason -- and we are not
24 sure why -- help to restore the imbalance that occurs. Okay.

25 Does that make any sense to you? I think it's a

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1
2 very -- we psychiatrists work in very nebulous areas.

3 Q Basically you cannot be positive what effect the
4 tranquilizers do have?

5 A We have some basic ideas of what to expect, but
6 anything can happen. That's correct.

7 MR. HANKEN: Nothing else.

8 THE COURT: Cross-examination, Mr. Coffey?

9 MR. COFFEY: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. COFFEY:

12 Q Would you be so good as to give me your notes?

13 A Surely.

14 Q Are these all your notes?

15 A Yes. Not very much.

16 Q Doctor, if I mispronounce some of these medical
17 terms, would you please correct me?

18 A Surely.

19 Q Forgive me for my ignorance.

20 Q I would like to direct your attention to -- I
21 believe you testified to exogenous depression. Is that the
22 correct term?

23 A That's correct.

24 Q Is that the type of depression which may have
25 resulted from an outside force?

2 A That's correct.

3 Q I take it endogenous depression is a type of
4 self-building of pressures inside a person which results in
5 some type of psychosis?

6 A That's correct. We don't know what could -- yes,
7 like the typical manic-depressive type.

8 Q Were you able to determine which type of
9 psychosis symptoms Mr. Adam was suffering from, whether it
10 was endogenous or exogenous?

11 A It's very difficult at this time. I can tell
12 you what I suspect, but I don't think --

13 Q Would it be fair to say you have not reached an
14 opinion with a reasonable degree of medical certainty?

15 A I haven't reached an opinion as to that, no. I
16 cannot say that I have.

17 Q You have seen Mr. Adam approximately six times?

18 A Yes, I believe that's correct.

19 Q How long would each of these or did each of these
20 interviews take?

21 A Most of the -- the sessions are scheduled for
22 fifty minutes. However, on two of these occasions he was
23 late and the session lasted about thirty minutes.

24 Q Would it be fair to say that the total time you
25 spent with Mr. Adam would be approximately five hours?

2 A Five or six hours, yes, counting telephone time,
3 because in a person of this type you must be in contact via
4 the telephone also.

5 Q How long have you been practicing psychiatry?

6 A I have been practicing psychiatry for four years.

7 Q Seen a great many patients in that course of time?

8 A Oh, yes.

9 Q And you would prefer to see a patient more than a
10 period of five or six hours before you reached any firm
11 conclusion as to what his mental state or mental disease he
12 may be suffering from? You would want more time before you
13 reached any certain --

14 A To make a definitive diagnosis; is this what you
15 mean?

16 Q Yes.

17 A Yes, to make a definitive diagnosis, yes. And
18 sometimes it is never made.

19 Q Do I take it that at this time, with respect to
20 Mr. Adam, you have made no definitive conclusion with respect
21 to the complete extent and nature of his medical problem?

22 A The only thing I can say here is that I have made
23 a definitive diagnosis, I feel, as to the fact that he
24 was depressed and needed to be treated for depression. But
25 the etiology, no.

2 Q Now let me ask you if Mr. Adam's condition that
3 you observed in August of this year could have resulted from
4 some traumatic event which occurred to him at some point in
5 time prior to this year; for example, a year ago.

6 A Certainly. Very certainly.

7 Q At the end of your sessions with Mr. Adam, I take
8 it he would get up and leave your office --

9 A Yes.

10 Q -- and go home or wherever he was headed?

11 A Uh huh.

12 Q And that was also with your knowledge and
13 acquiescence?

14 A Yes.

15 Q Would it be fair to say, then, that Mr. Adam was
16 sufficiently aware of the world around him that, when you let
17 him go from your office, you were sure he was not going to
18 walk into a moving bus or something like that?

19 A Yes, I was reasonably -- reasonably certain.

20 Q Would it be also fair to say that, whatever
21 memory problems he may or may not have had, Mr. Adam could
22 fairly recall the general events of what had occurred to him
23 in any line of inquiry you made?

24 A Yes.

25 Q Did he mention this case?

2 A Yes, he did, and --

3 Q Did he say what the case was about?

4 A What he said -- yes, he did say what it was about.

5 Q Would you tell us, first of all, on which visit he
6 indicated that?

7 A That's very difficult, because, to be perfectly
8 frank with you, I did not make much of this. I was very
9 interested in treating this fellow -- and remember, as I
10 pointed out earlier, he had a lot of delusion --

11 Q I do not mean to cut you off. Is your answer,
12 first of all, you do not recall which visit he mentioned --

13 A I do not recall. I'm just telling you why. I
14 did not realize the scope.

15 He asked me on one visit whether he could appear
16 for -- to be a witness.

17 Q What did you tell him?

18 A I told him this: I said, "I don't think you are
19 really, you know, able to do this."

20 Q Why did you state that?

21 A But -- because he, you know -- I felt it would
22 be a stressful situation.

23 However, let me qualify that a little bit, or
24 explain that further. He said, "I have some people that are
25 depending on me to be a witness, and I feel I have to go."

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2 I said, "Well, if you feel you are able to do it, you may go.
3 But if you feel it's too stressful for you, I will write some
4 kind of a letter for you," not realizing the scope of the
5 situation, believe me.

6 Q I take it it has had an effect on Mr. Adam,
7 the experience, being in court?

8 A Definitely, definitely.

9 Q I want to be clear about this, Doctor: Were
10 you originally recommending to Mr. Adam he not testify
11 because of the adverse effect and the stress which would
12 result from his testifying?

13 A Yes.

14 Q All right.

15 A I must --

16 Q You did not reach any conclusion, did you, that
17 he was not able, if he did testify, to testify truthfully or
18 competently?

19 A No, I did not. As I pointed out, I did not know
20 the scope of the situation. I thought it was just a simple
21 Circuit Court type of thing.

22 Q At the time you observed Mr. Adam, was it your
23 opinion that he could testify truthfully and competently, as
24 best you could judge from seeing him?

25 MR. HANKEN: Your Honor, I will object to

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2 that. I understand that was one of the things he said.

3 Q A That I can't -- I have lied up to his demands,

4 Q MR. HANKEN: He said he did not make such a
5 judgment because he did not realize --

6 THE COURT: I think that is all he was

7 A going to say.

8 THE WITNESS: Yes. I can't do it.

9 MR. HANKEN: The answer is that he cannot
10 make such a judgment.

11 THE COURT: Your objection was that he has
12 already answered the question already, and I am saying he
13 is giving the same question on cross, so I will
14 overrule the objection.

15 BY MR. COFFEY:

16 Q When Mr. Adam was in your office on those six
17 occasions, did he understand he was, in fact, in your office?

18 A Oh, yes.

19 Q He understand who he was?

20 A Oh, definitely.

21 Q Did he seem to understand the problems he was
22 relating?

23 A Yes.

24 Q His divorce occurred back in 1973; did it not?

25 A Yes, I believe so. It was over.

1
2 Q Did you testify that that was one of the traumatic
3 instances in his life that may have led up to his depression?
4 A Oh, definitely.

5 Q And yet you observed his depression for the first
6 time a good deal later, in the months of July and August 1974?
7 A Of course, that is not without understanding
8 that he -- that this hasn't been going on for a long period of
9 time. I suspect it has for this severity of the condition.

10 Q Knowing that, were you of the opinion that, despite
11 his psychosis, to the extent that he had depression, Harvey
12 Adam could relate to the world and would know what was
13 going on around him?

14 A Generally, yes, yes.

15 Q I think you testified that under times of stress
16 there are certain symptoms which a person suffering from
17 psychotic depression would display?

18 A That's correct.

19 Q And if he took a prescribed drug, that, in turn,
20 might show other type of symptoms?

21 A Uh huh.

22 Q If Mr. Adam took Cogentin or Trilafon or both
23 while he was here testifying, would it be likely that he would
24 display some dryness of the mouth?

25 A Definitely. That's one of the definite side

1
2 effects.

3 Q How about glaucoma?

4 A Glaucoma?

5 Q Cannot read, eyes blurring up.

6 A Oh, yes, but that's not glaucoma. Yes, definitely,
7 yes.

8 Q An inability to read?

9 A Yes, very common side effect.

10 Q In your experience as a psychiatrist, have you
11 observed that if a person is suffering from a psychosis,
12 either in or not under use of remedial drugs, a person can
13 remember part of a traumatic event but not the whole thing?

14 A Oh, definitely.

15 Q Would it be possible for Harvey Adam to remember
16 a threat against his personal welfare?

17 MR. HANKEN: Oh, your Honor, I will object.

18 Phrasing of the question. I will object to the
19 phrasing, "possible."

20 THE COURT: Yes, but I must allow him to
21 continue the question. And, of course, I have
22 instructed the jury a question is not evidence.
23 And then you may object.

24 MR. HANKEN: Yes, your Honor.

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2 BY MR. COFFEY:

3 Q Would it be possible for a person such as Harvey
4 Adam, suffering from what you determined he was, to be able
5 to remember a traumatic event, such as a statement "You will
6 get your brains racked in," but not remember when it was said
7 or the specific words of what was said?

8 A That's correct. Yes.

9 Q Would it be your experience that a statement
10 such as "You will get your brains racked in" is of such
11 importance to a person that he would be able to remember that
12 and who said it but not be able to remember the date or the
13 exact words?

14 A That is quite probable.

15 Q I think you also testified that, if a person
16 suffering from a depression, which Mr. Adam was, were to take
17 either Trilafon or Cogentin together, these remedial drugs may,
18 in fact, help him to remember an event which otherwise,
19 suffering from depression, he might have blocked out of his
20 mind?

21 A In a sense, yes.

22 Q You cannot say for sure?

23 A I can't say for sure.

24 Q But your experience is that these drugs to some
25 extent are predictable?

1 D'Apice - cross

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2 A Yes.

3 Q And a predictable nature of Trilafon or Cogentin,
4 if taken together, would be to aid a person in overcoming the
5 infirmity under which he was suffering?

6 A That's correct.

7 Q Would you say, in your expert opinion, then, that
8 the probability is that Mr. Adam's taking of these two
9 prescribed drugs by you could have only assisted him --
10 probability now -- in overcoming the stress he would have
11 experienced on the stand?

12 MR. HANKEN: Your Honor, I will object.

13 I have to object unless the question is phrased
14 including the number he actually took.

15 Q Assuming he took four or five of each.

16 THE WITNESS: Could you possibly repeat that
17 question?

18 MR. COFFEY: May the question be read?

19 (The question referred to was read by the
20 reporter as above recorded.)

21 A I think I'd have to go along with saying the
22 probability is yes.

23 Q Did you discuss the underlying circumstances of
24 this case with Mr. Adam?

25 A No, not -- I have to answer that -- I frankly

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D'Apice - cross

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2 ignored it. I do know now, particularly now, after -- after
3 our conversation today --

4 Q You know from somebody else other than Mr. Adam?

5 A No, I know from him. He mentioned it before.
6 However, I did not pay too much mind to it.

7 MR. HANKEN: I object to the conversation.

8 It occurred after.

9 THE COURT: If it enabled him to reach a
10 diagnosis, that is what he is testifying to, or --

11 MR. COFFEY: May I withdraw that?

12 THE COURT: The question is withdrawn.

13 Go ahead.

14 BY MR. COFFEY:

15 Q In considering why Mr. Adam had suddenly begun to
16 display, at least enough to require medical attention, a
17 psychotic depression, did you take into consideration the
18 fact that one contributing factor may have been his experience
19 which resulted in this case?

20 A Certainly.

21 Q Now --

22 A Certainly in retrospect.

23 MR. HANKEN: I will ask that that be
24 stricken, your Honor, because as he looks back in
25 retrospect it is certainly not -- the issue here

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1 D'Apice - cross

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2 is as he appeared at the time he examined him.

3 THE COURT: Doctor, do you know what this
4 case is all about?

5 THE WITNESS: I don't know that much about
6 it. May I say this, your Honor? When a man who
7 is quite ill tells me that the FBI is waiting for
8 him outside, I always take it with a grain of
9 salt -- and I don't mean that facetiously.

10 THE COURT: What we are trying to find out,
11 Doctor, is, when you said the stress arising out
12 of this case may in retrospect have affected him,
13 do you mean the stress of a case of this
14 importance, or of the principle such as the FBI
15 being involved, or do you know about the very
16 facts that came out in evidence in this case?

17 THE WITNESS: The only thing I know is that
18 Mr. Adam was involved with some gamblers or
19 something, and I did not inquire to the scope of
20 that.

21 THE COURT: I will allow the answer to
22 stand. The weight will be for the jury.

23 Go ahead.

24 MR. COFFEY: Thank you, your Honor.

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2 BY MR. COFFEY:

3 Q Doctor, I noticed that during the course of your
4 direct examination you frequently said "when a person
5 experiences such and such a symptom" or "when one takes this
6 type of drug," speaking in the impersonal third party; am I
7 correct?

8 A Yes.

9 Q Directing your attention specifically to Mr.
10 Adam, is it your opinion that Mr. Adam could recall events
11 of importance, as you understand that, as a common layman,
12 normal importance in one's life? Is it your opinion that
13 Mr. Adam could recall matters of importance in his life?

14 A Certainly.

15 Q Within, say, a period of twelve years?

16 A Certainly.

17 Q Twelve months?

18 A Certainly.

19 Q Would it be your opinion that Mr. Adam, from
20 speaking to him, if asked a question and being placed under
21 oath, would answer that question to the best of his ability
22 and truthfully?

23 MR. HANKEN: Your Honor, I do not see how
24 this witness could possibly answer that question,
25 because there are many reasons why a witness would

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2 not answer to the best of his ability which have
3 nothing to do with psychiatric --

4 THE COURT: We have been probing the doctor's
5 expertise. If he has an opinion and wants to
6 venture it and has a basis for it, I will allow him
7 to answer it. It goes to weight and not
8 admissibility.

9 THE WITNESS: Perhaps you better read that
10 question again and let me see if I can't answer
11 that.

12 BY MR. COFFEY:

13 Q Let me ask it this way:

14 When you asked Mr. Adam about an event in his life
15 which was important, such as his divorce --

16 A Yes.

17 Q -- did he respond to those questions?

18 A Yes, he did.

19 Q As a result of those responses, were you able to
20 reach a conclusion, in your expertise, as to whether Mr. Adam
21 responded fairly and truthfully?

22 A Yes. I feel -- I felt that Mr. Adam was responding
23 as truthfully as he could, yes.

24 Q And when he responded to a question which was
25 important in his life, he would be limited, would he not, by

the effect of the psychosis he was experiencing? In other words, he might want to answer truthfully but, because of depression, he might not be able to remember a date?

A That's correct.

Q Is that correct?

A That's correct.

Q So there were some built-in limitations to how accurate Harvey Adam could be?

A Yes. I think you are right there.

Q Would it be your testimony that in a matter of importance to Mr. Adam he would be able to recall that event, at least in general terms, and truthfully testify to that recollection?

A Truthfully, yes.

Q Would that be true, for example, with respect to his divorce?

A Yes.

MR. COFFEY: I think that concludes.

THE COURT: Anything further, Mr. Hanken?

MR. HANKEN: Yes, your Honor, just a few questions.

THE COURT: All right.

2 REDIRECT EXAMINATION

3 BY MR. HANKEN:

4 Q Talking in terms of accuracy and inaccuracy, of
5 how he would answer your questions when he came to see you,
6 he heard bells --

7 A Buzzing.

8 Q Buzzing?

9 A That's correct.

10 Q -- and strange sounds --

11 A Music.

12 Q -- music -- that did not exist; am I right?

13 A Yes.

14 Q He was hallucinating?

15 A He was hallucinating.

16 Q When a person hallucinates, he dreams up things
17 that are not happening except in his own mind?

18 A That's correct.

19 Q And he thinks they actually are happening?

20 A You are crossing between hallucination and delu-
21 sion. Delusion is a false belief. We have to be technical.

22 Q What is a hallucination?

23 A A hallucination is a perception of something that
24 isn't true. He was also suffering from delusion.

25 Q He was also suffering from delusion, is that right?

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2 A Yes.

3 Q So he had hallucinations and delusions?

4 A Yes, when I saw him, yes.

5 Q That was only last month, in July?

6 A Yes.

7 Q And that has nothing to do with accuracy or
8 inaccuracy; that is a total dream and a total fiction, isn't
9 that true, a delusion and a hallucination?

10 A No, it is not a total inaccuracy. All delusions
11 are based in fact and reality. They might be mis-
12 representations of reality, but they are usually always based
13 on a real situation.

14 Q I am afraid you lost me there.

15 A Maybe I can give you --

16 Q If he has paranoid delusions --

17 A Yes.

18 Q -- and one of the symptoms is he feels he is
19 being threatened, I presume this feeling of being threatened
20 does not exhibit or he would not have any paranoid delusions?

21 A That's not correct.

22 Q Would you explain them to us?

23 A Yes, sure.

24 A person may feel threatened but may need to find
25 a reason in his mind for the threatening to occur. He may
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2 need -- for example -- and this is just a hypothetical case --
3 for example, a man might come in -- has nothing to do with
4 Harvey -- he might come in and he says someone's out to get
5 him, maybe that he owes money and he canot pay the bill.
6 Let's assume that he has a big reputation in town. He is
7 horrified at that, so he develops a plot that the reason why
8 he can't pay his money and people are out to get him is some
9 underworld gang is out to get him. Okay. And, although the
10 reality is that someone is out to get him, it may not be the
11 underworld gang; do you understand?

12 Q But, by the same token, someone actually may not
13 be out to get him but he may be misrepresenting actions in his
14 own mind?

15 A Right.

16 Q Taking it to be such?

17 A That may be so. But I think you have to know the
18 facts before you can make that statement.

19 Q By the way, is he still taking these drugs?

20 A Yes, he is.

21 Q And he is still taking the same quantity as you
22 prescribed?

23 A As I said last, 200 of Elavil, yes.

24 Q That is what you prescribed initially?

25 A 150 initially. It's been raised slightly.

2 Q And how much did you prescribe of the -- whatever
3 the first drug was?

4 A Stelazine? 10 milligram.

5 Q No, the other one.

6 A The Trilafon?

7 Q Right.

8 A Let's see. 32 milligrams.

9 Q How much is he on now?

10 A He's on 32 milligrams.

11 Q How much was he on when you first saw him?

12 A He was on the Stelazine when I first saw him.

13 Q Has that changed since you first prescribed the
14 Trilafon?

15 A Yes, we've discontinued the Stelazine.

16 Q I mean as far as Trilafon is concerned, have you
17 changed the dosage any?

18 A No.

19 Q That is the same dosage as when you first
20 prescribed it?

21 A That's correct.

22 Q How about the Cogentin?

23 A The same.

24 Q You have not decreased any of them? In fact, one
25 you have increased?

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1 A Yes.

2 Q You said that you would write a letter for him
3 indicating that he would not have to go to court if he did not
4 want to go?

5 A I said -- I made a statement that if he had to
6 appear in court and he did not feel able, I certainly would
7 write a letter, because very often in the past a court has
8 accepted letters of people who are ill.

9 Q So I take it you did not write such a letter?

10 A No, I did not.

11 Q So I also take it that Mr. Adam felt he was able
12 to come?

13 A He was able to testify.

14 Q He wanted to come and testify?

15 A Yes, he did.

16 Q Because if he did not want to, you would have
17 written a letter for him?

18 A That's correct.

19 Q Isn't that true?

20 A Yes.

21 THE COURT: Anything further?

22 RECROSS-EXAMINATION

23 BY MR. COFFEY:

24 Q And when Mr. Adam indicated he was able to testify,

D'Apice - recross

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² you said go ahead?

A Yes, I said all right, go ahed.

4 Q One other area, Doctor, which was covered on
5 redirect:

When defense counsel, Mr. Hanken, asked you about delusions and you gave an example about someone may be out to get him, this other person -- that may, in fact, be a case?

A Yes.

Q Am I correct? You have to speak with and analyze a person before you find out whether, in fact, he is telling a very real thing?

A As I said before, when a person tells me the FBI is out waiting for him, I have to wait and see that it's accurate, because this is very unusual.

Q Did Mr. Adam make a statement?

17 A Yes, and apparently he was brought to my office
18 one day by an agent.

Q My final question is in this regard:

20 You testified that in matters of importance of
21 Harvey Adam's life you found that he was, in fact, accurately
22 and truthfully --

23 A Yes. I think the best example was that there was
24 an FBI man waiting for him. Indeed

MR. COFFEY: Thank you.

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2 THE COURT: Doctor, just two brief
3 questions:

4 One, I believe all know that a psychiatrist
5 has a medical background, but could you very
6 briefly, for the record, give us your qualifica-
7 tions?

8 THE WITNESS: Of course.

9 My premedical training at Fairfield Uni-
10 versity in 1961; M. D. Degree, St. Louis University,
11 1965. Between 1965 and 1967 I did a residency and
12 internship at St. Vincent's Hospital at Bridgeport,
13 Connecticut, and then the next three years, 1967
14 to '70, I did a residency at Fairfield Hills
15 Hospital in Newtown, Connecticut, and Yale
16 University in New Haven. I was on the staff of
17 Fairfield Hospital -- Hills Hospital for two
18 years, and I have been in the practice of
19 psychiatry, in private practice, for two years.

20 I belong to the American Psychiatric
21 Association and the Fairfield County and State
22 Medical Societies.

23 THE COURT: The other question I have is
24 this:

25 You were asked about the conversation you

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had with Mr. Adam about appearing in court?

THE WITNESS: Yes.

THE COURT: I thought you said -- and, if you did not, please correct me -- you said, "I said to him he could go to court if he wants to and feels up to it, because I didn't know the scope of the case. I thought it was a Circuit Court case."

By that do you mean that you -- well, let me ask you, then: Do you feel that this federal case is a different type of case than you had in mind?

THE WITNESS: Well, yes, I do, your Honor. I didn't mean to belittle the court system.

What I meant was I felt this was nothing really major, that if it were really major I probably would have heard about it from someone. But I had already been treating Harvey for about four weeks and then this thing came out of the blue, and I really did not feel, for some reason, that this was a significant thing.

As you realize, that sometimes, although August is supposed to be a slow month for us, it's been extremely hectic, and we have a lot of

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2 things to consider, and certainly civil matters
3 aren't always our number one priority.

4 THE COURT: If he had told you that this
5 was not a Circuit Court case but it was a major
6 criminal case and he was the major witness, would
7 that have changed your opinion any?

8 THE WITNESS: Well, I would have expected
9 the Court or some officials to contact me. Then
10 I would have known for sure. It would not be
11 my -- my general feeling to seek out the Court to
12 investigate this situation.

13 THE COURT: What I am trying to find out,
14 Doctor, is, if you knew what the situation was,
15 that he was a major witness, the key witness --

16 THE WITNESS: I understand.

17 THE COURT: -- in a major criminal case in
18 a Federal Court, would your opinion change as to
19 whether or not he should appear?

20 THE WITNESS: Yes. I think my opinion
21 would have changed.

22 THE COURT: Would you tell us what your
23 opinion would have been had you known the true
24 facts?

25 THE WITNESS: Had I known the true facts, I

2 would have suggested that it be postponed.

3 THE COURT: Could you tell us why, Doctor?

4 THE WITNESS: The only reason, I would say,
5 is because of the stressful situation. I felt it
6 might be a ~~stressful~~ situation for my patient --
7 and I am speaking in terms of my patient only in
8 that regard, nothing to do with the court, but as
9 a doctor-patient relationship.

10 THE COURT: Thank you very much, Doctor.

11 I know we got you out very suddenly and very
12 quickly, without you really probably having an
13 opportunity to even warn your patients this
14 afternoon, but I wish to tell you that we were
15 not sure we were going to call you until this
16 morning, and we appreciate your coming in.

17 THE WITNESS: Okay. Thank you. I think
18 things will work out.

19 THE COURT: I will excuse the ladies and
20 gentlemen of the jury until tomorrow morning at --
21 well, I should ask you this, Mr. Hanken: Do you
22 have any further witnesses?

23 MR. HANKEN: No, your Honor. Defense
24 rests.

25 THE COURT: Do you have any further

2 witnesses?

3 MR. COFFEY: No, your Honor.

4 THE COURT: Very well.

5 Ladies and Gentlemen, the testimonial
6 evidence is now concluded. We will proceed to
7 the summations tomorrow morning at ten-thirty.

8 Please do not discuss this case even among
9 yourselves or with anyone else, or read about it
10 in any newspaper, and do not do any research.

11 Just keep an open mind till tomorrow morning at
12 ten-thirty, when we will hear the summations,
13 and then you will proceed to the charge and
14 deliberations.

15 You are now excused. Goodnight, and have a
16 good night.

17 You are excused, too, Doctor.

18 (Witness excused)

19 (Jury not present)

20 THE COURT: It has been a long day, I know,
21 for counsel, so I will hear argument on the
22 failure to call witnesses tomorrow morning at
23 ten-fifteen; and, on the failure of the defendant
24 to take the stand, all you have to do is come
25 into my chambers and I will give you my standard

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1
2 charge.

3 I do have my charge prepared. It would be
4 a great help to the Court if both of you gentlemen
5 could read this, and then, at ten-fifteen tomorrow,
6 tell me if you have any suggestions. Now, if
7 you come into chambers, I believe I have a copy
8 and I have the original, and you both can read it
9 overnight and report back to me in the morning.

10 MR. COFFEY: All right, your Honor.

11 Your Honor, would it be inappropriate of me,
12 of the Court, to inquire, so I can cope with the
13 argument, what witness the Government did not
14 allegedly recall?

15 THE COURT: Yes.

16 MR. HANKEN: Just Mr. McNamara to rebut
17 the allegations made by Mr. Adam that he told
18 Mr. McNamara about each and every bodily threat he
19 received from Mr. DiGirolamo, yet they were not in
20 Mr. McNamara's notes. I honestly believe that if
21 Mr. McNamara was told these things, you could not
22 have chained him to the chair.

23 THE COURT: Do you object to the charge on
24 that basis?

25 MR. COFFEY: Yes.

1
2 THE COURT: The objection is sustained for
3 the obvious reason that Mr. McNamara is in court,
4 could have been asked those questions, and
5 actually was on the stand at least twice during
6 the course of this trial and maybe once outside
7 the presence of the jury, and so the request
8 really goes to a comment that Mr. Coffey did not
9 ask certain questions of Mr. McNamara, not the
10 fact that Mr. McNamara was not called. So
11 obviously, since Mr. McNamara was here, was
12 equally available to both parties, was not only
13 called by the Government but was called by the
14 defendant, the failure to call a witness charge is
15 clearly inapplicable. That is the ruling of the
16 Court.

17 I will see you in chambers.

18 We adjourn until ten-fifteen tomorrow
19 morning.

20 (Court adjourned)

1
2 The Government contends it proved beyond a
3 reasonable doubt the requisite specific criminal
4 intent of the defendant. On the other hand, the
5 defendant denies the Government has sustained its
6 burden.

7 It is for you to decide this issue.

8 If you find that any one of these three
9 essential elements charged in count seven has not
10 been proven beyond a reasonable doubt with respect
11 to the defendant, he must be acquitted of the
12 charge alleged in count seven. If, however, you
13 are convinced beyond a reasonable doubt that the
14 Government has sustained its burden of proof as
15 to each element, then you are to return a verdict
16 of guilty on count seven against the defendant.

17 Now, in performing your function and in
18 your search for the truth here, one of the most
19 important things you have to do is pass upon this
20 matter of credibility; that is, the "believability"
21 of the various witnesses who have appeared before
22 you. In passing on the credibility of each of
23 the witnesses, there are certain considerations you
24 may well have in mind. One of these is the
25 appearance which the witness made when he was on

the stand; you should try to "size him up." Did he appear to be telling the truth? Did he appear to be honest? Did he appear to be intelligent? That is, did he appear to be a person who could have observed accurately what he is telling you about, who would be likely to have remembered it accurately, and who was capable of reporting it to you accurately?

Another question for you to have in mind regarding each witness is the question as to whether the story he has told you is plausible. Does it ring true, or are there inconsistencies in it? How does it fit in with other evidence in the case which you do believe and other facts you find to have existed? Does it jibe with that evidence and those facts? In short, does the testimony which was given by the particular witness whose credibility you are considering seem to you to be plausible? In this connection, you may also bear in mind that if you should find that any witness has been deliberately falsifying on any one material point in his testimony, you are privileged to take that fact into consideration in determining whether he has falsified on other

points. Simply because you find that a witness has not repeated one fact to you accurately, it does not necessarily follow that he is wrong on every other point. A witness may be honestly mistaken on one element of his testimony and be entirely accurate and correct on the other points. A witness may even be deliberately falsifying on one point and yet be entirely truthful on all other points. But if you find that a witness has deliberately lied on one material subject it is only natural that you should be suspicious of his testimony on all subjects, and under those circumstances you are entitled to disbelieve his whole testimony. Whether you disbelieve it or not, however, lies in your own sound judgment.

* You have the right to reject testimony even though it is uncontradicted if you feel you have a justifiable reason for doing so.

Another question you may well ask yourself in passing on the credibility of any witness is as to whether that witness has any bias or interest in the outcome of the case, and, if so, whether he has permitted that bias or interest to color his testimony. In short, you are to apply the same

1 considerations and use the same sound judgment
2 you apply to questions of truth or veracity which
3 are daily presenting themselves for your decision
4 in the ordinary affairs of life.

5 During the course of the trial I permitted
6 you to read a transcription of the June 1st tape
7 at the time you were listening to the tape. As
8 I instructed you at the time, the tape recording
9 was evidence; the transcript was merely an aid to
10 the jury to help you follow the statements in the
11 recording. Therefore, if what you heard differs
12 from what you read, it is what you heard that
13 counts, not what you read.

14
15 I also instruct you that a witness may be
16 discredited or impeached by contradictory evidence
17 or by evidence that at other times he made
18 statements which are inconsistent with his
19 present testimony. If you find that any witness
20 has been so impeached, then give that testimony of
21 that witness such credibility, if any, as you
22 think it deserves. You may reject all his
23 testimony or you may accept such part of his
24 testimony as you find to be credible.

25 Also, the testimony of a witness who admits

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2 that on a prior occasion he testified falsely
3 under oath should be considered with caution and
4 weighed with great care.

5 Moreover, a witness' physical condition and
6 mental or psychiatric capacity at the times relevant
7 to this case, including the time he testified in
8 this courtroom, are relevant considerations for
9 you when judging the witness' credibility.

10 Among other things, it may reflect on his ability
11 and power to observe accurately, to remember
12 accurately and to report accurately. It is for
13 you to decide these issues when passing on the
14 credibility of the witness. In this regard, in
15 weighing the testimony of any medical expert
16 witness in this case, you are to apply the same
17 considerations you apply to the testimony of any
18 other witness. In addition, you may consider
19 whether he possessed a peculiar and exclusive
20 knowledge and experience in a specialized field.

21 Also, there is testimony in this case given
22 by a law enforcement agent. The testimony of
23 such an officer is entitled to no special or
24 exclusive sanctity merely because it comes from an
25 officer of the law. An officer or agent who
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takes the witness stand subjects his testimony to the same examination and the same tests that any other witness does, and you should not believe them merely because they are law enforcement officials. You should recall their demeanor on the stand and manner of testifying, the substance of their testimony, and weigh and balance it just as carefully as you would the testimony of any other witness.

One last matter. In your deliberations as to the guilt or innocence of the defendant, please do not consider the matter of possible punishment. That matter is mine, not yours.

In conclusion, Members of the Jury, I impress upon you that you are duty-bound as jurors to apply the law, as you have been advised by the Court, to the facts of this case, as you find them.

Now, take this case with you to the jury room. Determine the facts on the basis of the evidence, as it has been presented to you. Apply the law as I outlined it to you. Then render your verdicts fairly, uprightly, and without a scintilla of prejudice.

When you reach your verdicts, they must be

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Supplemental Appendix for Appellee have been served upon attorney for appellant at the following address: *on the 18th of April, 1975*

Charles Hankin, Esquire
1330 Fairfield Avenue
Bridgeport, Connecticut 06605

David E. Roseberry

DAVID E. ROSEBERRY
Attorney
Appellate Section
Criminal Division